

HOUSE JOURNAL

SEVENTY-FOURTH LEGISLATURE, REGULAR SESSION

PROCEEDINGS

SEVENTY-SIXTH DAY — THURSDAY, MAY 18, 1995

The house met at 10 a.m. and was called to order by the speaker.

The roll of the house was called and a quorum was announced present (Record 457).

Present — Mr. Speaker; Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carona; Carter; Chisum; Clemons; Coleman; Combs; Conley; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Denny; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Gallego; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Ogden; Oliveira; Park; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solis; Solomons; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost; Zbranek.

Absent, Excused — Staples.

Absent — Cook.

The invocation was offered by Reverend John D. Payne, Bellaire Baptist Church, San Antonio, as follows:

Infinite God and Father of all, we thank thee that thou has placed within the being of man a desire for aspiration and achievement. Thy creative work has challenged man, thy creature, whom thou didst create a little lower than thyself to build and expand and extend his services to his fellow man, that the blessings of convenience and comfort may be available to all. That from this service humankind, citizens of the great state of Texas, may desire a sense of dependence and brotherhood, community interest and concern, thus seeking to exemplify the spirit of your Son, who is not only the master builder of our faith, but of the framework of economic and social blessedness.

Give us the bifocals of faith that see despair and the need of the hour, but also see, further on, the patience of God working out his plan in and through us. Trusting in thee, may we have the faith that goes singing in the rain, knowing that all things work together for good to them that love thee. Bless this great assembly and all those who labor with them. In the name of our Lord. Amen.

MESSAGE FROM THE SENATE

Austin, Texas, May 18, 1995

The Honorable Speaker of the House of Representatives
House Chamber

The Honorable
Mr. Speaker:

I am directed by the Senate to inform the House that the Senate has passed the following:

HB 160 by Kamel, et al. (Sponsor-Ratliff), relating to the regulation of litter by counties (amended).

HB 321 by Rabuck (Sponsor-Nixon, Drew), relating to a speed limit for school buses.

HB 344 by Van de Putte (Sponsor-Wentworth), relating to the issuance of a commission to certain branch pilots.

HB 635 by Lewis, Ron (Sponsor-Galloway), relating to territory contained within the Jefferson County Water Control and Improvement District No. 10.

HB 814 by Coleman, et al. (Sponsor-Ellis), relating to the restoration, operation, and maintenance of certain historic cemeteries (committee substitute).

HB 865 by Maxey, Naishtat, and Raymond (Sponsor-Zaffirini), relating to an increase in federal funding for mental health services for children and families.

HB 1381 by Glaze (Sponsor-Cain), relating to the election of the members of the board of directors of the Van Zandt County Waste Disposal District.

HB 1559 by Turner, Sylvester (Sponsor-Whitmire), relating to payment of member contributions to retirement systems for police officers in certain municipalities.

HB 1564 by Chisum, et al. (Sponsor-Nelson), relating to the attorney general's review of bonds issued by political subdivisions of this state.

HB 1567 by Gray (Sponsor-Bivins), relating to the operation and implementation of the correctional managed health care plan.

HB 1583 by Rusling, et al. (Sponsor-Turner, Jim), relating to taxation of certain lawn services (amended).

HB 1696 by Maxey (Sponsor-Turner, Jim), relating to tuberculosis screening for certain employees of the Texas Department of Criminal Justice and related managed care plans.

HB 1745 by Turner, Sylvester (Sponsor-Zaffirini), relating to requiring immunization for hepatitis B of certain students.

HB 1824 by Pickett (Sponsor-Rosson), relating to rates for water supply or sewer services charged by the City of El Paso to residents of a certain area of El Paso County.

HB 1899 by Turner, Sylvester (Sponsor-Whitmire), relating to a deferred retirement option plan for members of retirement systems for police officers in certain municipalities.

HB 1914 by Solomons (Sponsor-Cain), relating to the form of a voter's name on a voter registration application or certificate.

HB 2021 by Berlanga (Sponsor-Truan), relating to the certification of certain health organizations to contract with or employ certain health practitioners.

HB 2069 by Hill (Sponsor-Leedom), relating to the disannexation of certain land by a municipality (amended).

HB 2078 by Puente (Sponsor-Madla), relating to the sale or lease of property by municipalities, counties, or other political subdivisions (committee substitute).

HB 2094 by Thompson (Sponsor-Whitmire), relating to voluntary inpatient mental health services for certain persons.

HB 2159 by Grusendorf (Sponsor-Shapiro), relating to the enforcement of a protective order by a constable.

HB 2176 by Price (Sponsor-Cain), relating to the award of highway improvement contracts.

HB 2495 by Harris, Jack, Rabuck, Wolens, et al. (Sponsor-Cain), relating to the transfer of the Baylor College of Dentistry to The Texas A&M University System.

HB 2687 by Turner, Sylvester (Sponsor-Whitmire), relating to service on the boards of trustees of retirement systems for police officers in certain municipalities.

HB 2842 by Turner, Sylvester (Sponsor-Whitmire), relating to eligibility for disability pensions from retirement systems for police officers in certain municipalities.

HB 3061 by Smithee (Sponsor-Bivins), relating to the authority of the Swisher Memorial Hospital District to issue anticipation notes and certificates of obligation.

HB 3072 by Gallego (Sponsor-Shapiro), relating to the use of solid waste fee revenues (amended).

HB 3075 by Siebert (Sponsor-Haywood), relating to definition, sale, and purchase of certain fish.

HB 3171 by Luna, Vilma, Berlanga, et al. (Sponsor-Truan), relating to the exemption of certain chemical dependency programs from licensure requirements.

Respectfully,
Betty King
Secretary of the Senate

SIGNED BY THE SPEAKER

The speaker signed in the presence of the house, after giving due notice thereof, the following enrolled bills and resolutions:

HB 176, HB 366, HB 673, HB 674, HB 1136, HB 1345, HB 1399, HB 1408, HB 2128, HB 2376, HB 2505, HJR 31, HCR 204

(Cook now present)

CAPITOL PHYSICIAN

Speaker Laney presented Dr. J.J. Westernberg of Childress as the "Doctor for the Day."

The house welcomed Dr. Westernberg and thanked him for his participation in the Physician of the Day Program sponsored by the Texas Academy of Family Physicians.

INTRODUCTION OF GUESTS

The speaker recognized Representative Patterson, who introduced members of the "Think Child Safety" program.

HCR 141, designating May 18, 1995, as Think Child Safety Day at the Capitol, having been previously adopted, was read.

HR 962 - ADOPTED

Representative Rhodes moved to suspend all necessary rules to take up and consider at this time **HR 962**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By Rhodes,

HR 962, Welcoming Native American Tribes to the Sacred Springs Pow-Wow and Western Swing Festival.

The resolution was adopted without objection.

HR 975 - ADOPTED

Representative Elkins moved to suspend all necessary rules to take up and consider at this time **HR 975**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By Elkins,

HR 975, Honoring the Cypress-Fairbanks High School girls' softball team.

The resolution was adopted without objection.

HCR 214 - ADOPTED

Representative Hamric moved to suspend all necessary rules to take up and consider at this time **HCR 214**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By Hamric,

HCR 214, Commending the students of Klein Forest High School and designating May 19, 1995, as a Day of Hope and Healing in Texas.

The resolution was read and was adopted without objection.

On motion of Representatives Heflin and Brady, the names of all the members of the house were added to **HCR 214** as signers thereof.

INTRODUCTION OF GUESTS

The speaker recognized Representative Hamric, who introduced students from Klein Forest High School

HR 978 - ADOPTED

Representative Madden moved to suspend all necessary rules to take up and consider at this time **HR 978**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By Madden and McCall,

HR 978, Honoring Jonnie and Gerhard Schulz.

The resolution was adopted without objection.

HR 976 - ADOPTED

Representative Longoria moved to suspend all necessary rules to take up and consider at this time **HR 976**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By Longoria,

HR 976, In memory of Alvaro Hernandez.

The resolution was adopted without objection.

RESOLUTIONS REFERRED TO COMMITTEES

The following resolutions were laid before the house and referred to committees:

By Janek,

HCR 210, Creating a special committee to designate Texas state artists.
To Committee on House Administration.

By Swinford,

HCR 211, Declaring legislative intent that the comptroller of public accounts adopt certain policies relating to refund and credit claims on erroneously collected taxes, penalties, and interest.

To Committee on Ways and Means.

By Dutton, et al.,

HCR 213, Requesting the attorney general to investigate traffic ticket traps.

To Committee on Transportation.

By Gutierrez,

HR 965, Honoring Mayor Rubio Salinas.
To Committee on Rules and Resolutions.

By Gutierrez,

HR 966, Congratulating Matthew Charles Williams on attaining the rank of Eagle Scout.

To Committee on Rules and Resolutions.

By Gutierrez,

HR 967, Honoring the former mayor of Pharr, Quentin Newcombe, Jr.

To Committee on Rules and Resolutions.

By Gutierrez,

HR 968, Commending Sharon Christa McAuliffe Elementary School for participating in the Mentor School Network.

To Committee on Rules and Resolutions.

By Gutierrez,

HR 969, Honoring Pharr Crime Stoppers, Inc.

To Committee on Rules and Resolutions.

By T. Hunter, et al.,

HR 970, Honoring Y. C. Wang on the occasion of his visit to Texas.

To Committee on Rules and Resolutions.

SENATE BILL ON FIRST READING

The following senate bill was today laid before the house, read first time, and referred to committee:

SB 1237 to Committee on State Affairs.

RESOLUTION REFERRED TO COMMITTEE

The following resolution was laid before the house and referred to committee:

SCR 91, Urging Congress to enact HR 842, the "Truth in Budgeting Act."

To Committee on State Affairs.

SIGNED BY THE SPEAKER

The speaker signed in the presence of the house, after giving due notice thereof, the following enrolled bills and resolutions:

SB 21, SB 59, SB 60, SB 81, SB 146, SB 187, SB 223, SB 237, SB 248, SB 251, SB 258, SB 264, SB 271, SB 286, SB 361, SB 372, SB 375, SB 391, SB 393, SB 482, SB 524, SB 542, SB 686, SB 706, SB 768, SB 774, SB 793, SB 831, SB 916, SB 938, SB 980, SB 988, SB 1067, SB 1146, SB 1223, SB 1282, SB 1504, SB 1530, SCR 55, SCR 56, SCR 57, SCR 60, SCR 95

SB 369 ON THIRD READING

(Black - House Sponsor)

The speaker laid before the house, as postponed business, on its third reading and final passage,

SB 369, A bill to be entitled An Act relating to the continuation and functions of the State Preservation Board.

The bill was read third time on May 16 and was postponed until 10 a.m. today.

Representative Black moved to postpone consideration of **SB 369** until 10 a.m. Monday, May 22.

The motion prevailed without objection.

SB 14 ON THIRD READING

(Combs, Saunders, Black, Stiles, Hightower, et al. - House Sponsors)

The speaker laid before the house, on its third reading and final passage,

SB 14, A bill to be entitled An Act relating to protecting private real property rights from certain actions of this state or a political subdivision of this state.

The bill was read third time and was passed. (Maxey recorded voting no; King, yes)

SB 640 ON THIRD READING

(Holzheuser - House Sponsor)

The speaker laid before the house, on its third reading and final passage,

SB 640, A bill to be entitled An Act relating to the imposition, collection, and enforcement of taxes; providing penalties.

The bill was read third time.

Amendment No. 1

Representative Siebert offered the following amendment to the bill:

Amend **SB 640** by inserting new Section 67 on page 52, line 17 as follows, and renumbering the remaining Sections:

SECTION 67. Section 321.101, Tax Code, is amended to read as follows:

Sec. 321.101. TAX AUTHORIZED. (a) A municipality may adopt or repeal a sales and use tax authorized by this chapter, other than the additional municipal sales and use tax, at an election in which a majority of the qualified voters of the municipality approve the adoption or repeal of the tax.

(b) A municipality that is not disqualified may, by a majority vote of the qualified voters of the municipality voting at an election held for that purpose, adopt an additional sales and use tax for the benefit of the municipality in accordance with this chapter. A municipality is disqualified from adopting the additional sales and use tax if the municipality:

(1) is included within the boundaries of a rapid transit authority created under Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes);

(2) is included within the boundaries of a regional transportation authority created under Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas Civil Statutes), by a principal city having a population of less than 800,000, unless the city has a population of 400,000 or more and is located in more than one county;

(3) is wholly or partly located in a county that contains territory within

the boundaries of a regional transportation authority created under Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas Civil Statutes), by a principal city having a population in excess of 800,000, unless:

(A) the city is a contiguous city; or

(B) the municipality is not included within the boundaries of the authority and is located wholly or partly in a county in which fewer than 250 persons are residents of both the county and the authority according to the most recent federal census; or

(C) the municipality is not and on January 1, 1993, was not included within the boundaries of the authority; or

(4) imposes a tax authorized by Article 1118z, Revised Statutes.

(c) A municipality is not disqualified from adopting an additional sales and use tax if the municipality has not elected to participate in the authorities listed in Subsection (b) and does not impose the tax authorized under those subdivisions.

(d) For the purposes of Subsection (b), "principal city" and "contiguous city" have the meanings assigned by Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas Civil Statutes).

(e) [(f)] In any municipality in which an additional sales and use tax has been imposed, in the same manner and by the same procedure the municipality by majority vote of the qualified voters of the municipality voting at an election held for that purpose may reduce, increase, or abolish the additional sales and use tax.

(f) [(e)] An authority created under Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes), or Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas Civil Statutes), is prohibited from imposing the tax provided for in those Acts if within the boundaries of the authority there is a municipality that has adopted the additional sales and use tax provided for in this section.

(g) [(f)] A municipality may not adopt or increase a sales and use tax or an additional sales and use tax under this section if as a result of the adoption or increase of the tax the combined rate of all sales and use taxes imposed by the municipality and other political subdivisions of this state having territory in the municipality would exceed two percent at any location in the municipality.

(h) [(g)] For the purposes of Subsection (f), "territory" in a municipality having a population of 5,000 or less and bordering on the Gulf of Mexico does not include any area covered by water and in which no person has a place of business to which a sales tax permit issued under Subchapter F of Chapter 151 applies.

(Speaker pro tempore in the chair)

A record vote was requested.

Amendment No. 1 failed of adoption by (Record 458): 5 Yeas, 129 Nays, 2 Present, not voting.

Yeas — Averitt; Bosse; Brimer; Corte; Uher(C).

Nays — Alexander; Allen; Alonzo; Alvarado; Bailey; Berlanga; Black; Brady; Carona; Carter; Chisum; Clemons; Coleman; Conley; Cook; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Denny; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Elkins; Farrar; Finnell; Gallego; Giddings; Glaze; Goodman; Goolsby; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Hawley; Heflin; Hernandez; Hilbert; Hilderbran; Hill; Hirschi; Holzheuser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Maxey; McCall; McCoulskey; McDonald; Moffat; Moreno; Munoz; Naishtat; Nixon; Oakley; Oliveira; Park; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Seidlits; Serna; Shields; Siebert; Solis; Solomons; Stiles; Swinford; Talton; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost; Zbranek.

Present, not voting — Mr. Speaker; Hartnett.

Absent, Excused — Staples.

Absent — Combs; Eiland; Gray; Harris; Hightower; Hochberg; Jackson; Marchant; Mowery; Ogden; Saunders; Smithee; Telford.

STATEMENT OF VOTE

I was shown voting yes on Record No. 458. I intended to vote no.

Bosse

SB 640 was passed.

SB 641 ON THIRD READING (Holzheuser - House Sponsor)

The chair laid before the house, on its third reading and final passage,

SB 641, A bill to be entitled An Act relating to administration and collection of certain insurance taxes.

The bill was read third time and was passed.

SB 642 ON THIRD READING (Holzheuser - House Sponsor)

The chair laid before the house, on its third reading and final passage,

SB 642, A bill to be entitled An Act relating to the appraisal of property for ad valorem taxation and the assessment and collection of ad valorem taxes.

A record vote was requested.

The bill was read third time and was passed by (Record 459): 145 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carona; Carter; Chisum; Clemons; Coleman;

Combs; Conley; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Denny; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Gallego; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Hawley; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Oliveira; Park; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solis; Solomons; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher(C); Van de Putte; West; Williamson; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost; Zbranek.

Present, not voting — Mr. Speaker.

Absent, Excused — Staples.

Absent — Heflin; Ogden; Walker.

SB 643 ON THIRD READING
(Holzheuser - House Sponsor)

The chair laid before the house, on its third reading and final passage,

SB 643, A bill to be entitled An Act relating to the administration, imposition, collection, and enforcement of mixed beverage taxes.

The bill was read third time and was passed.

(Speaker in the chair)

SB 644 ON THIRD READING
(Holzheuser - House Sponsor)

The speaker laid before the house, on its third reading and final passage,

SB 644, A bill to be entitled An Act relating to administration and collection of the franchise tax.

The bill was read third time and was passed.

SB 750 ON THIRD READING
(Uher - House Sponsor)

The speaker laid before the house, on its third reading and final passage,

SB 750, A bill to be entitled An Act relating to the creation of a license management program for certain commercial fishing.

A record vote was requested.

The bill was read third time and was passed by (Record 460): 148 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga;

Black; Bosse; Brady; Brimer; Carona; Carter; Chisum; Clemons; Coleman; Combs; Conley; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culbertson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Denny; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Gallego; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Ogden; Oliveira; Park; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solis; Solomons; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Staples.

SB 1262 ON THIRD READING (Junell - House Sponsor)

The speaker laid before the house, on its third reading and final passage,

SB 1262, A bill to be entitled An Act relating to the management, development, accounting, and disposition of certain state property.

The bill was read third time and was passed.

SB 3 ON SECOND READING (Seidlits - House Sponsor)

The speaker laid before the house, on its second reading and passage to third reading, the complete committee substitute for **SB 3**.

CSSB 3, A bill to be entitled An Act relating to the regulation of motor carriers; providing civil, administrative, and criminal penalties.

CSSB 3 was read second time.

Amendment No. 1

Representative Seidlits offered the following amendment to **CSSB 3**:

Amend **CSSB 3** by striking section (j) on page 8 and substituting the following:

(j) Notwithstanding any contrary provision of any law or regulation, a motor carrier required to register under this article shall protect its employees by obtaining workers' compensation insurance coverage as defined under the Texas Workers' Compensation Act (Article 8308.01 et seq., Vernon's Texas Civil Statutes) or accidental insurance coverage in an amount fixed by the Texas Department of Transportation from a reliable insurance company or companies

authorized to write such policies in this state approved by the department. The amount fixed by the department may not be less than \$300,000 for medical expenses for no less than 104 weeks, \$100,000 for accidental death and dismemberment, 70% of the employee's pre-injury income for no less than 104 weeks when compensating for loss of income, and \$500 for the maximum weekly benefit.

Amendment No. 1 was adopted without objection.

Amendment No. 2

Representative Seidlits offered the following amendment to **CSSB 3**:

1. Amend **CSSB 3** as follows:

On page 47, line 26 and page 52, line 24 insert the words "or Article 6675c-I" between "Article 6675c" and the comma.

2. Amend **CSSB 3** on page 36 line 7, and on page 55, line 23, by striking "~~2000~~" and inserting "1997".

3. Amend **CSSB 3** in SECTION 1, proposed Article 6675c, Sec. 1(3) (house committee report, page 2 line 13, strike "or" and substitute "and".

Amendment No. 2 was adopted without objection.

Amendment No. 3

Representative Bosse offered the following amendment to **CSSB 3**:

Amend **CSSB 3** in SECTION 1 of the bill by adding a new Subsection (r) to proposed Section 6, Article 6675c, Revised Statutes, (page 14, after line 20, House Committee Report) to read as follows:

(r) In addition to a penalty proposed by an administrative law judge under Subsection (h), the administrative law judge shall include in the proposal for a decision a finding setting out costs, fees, expenses, and reasonable and necessary attorney's fees incurred by the state in bringing the proceeding. The director may adopt the finding and make it a part of a final order entered in the proceeding. The proceeds collected from a finding made under this subsection shall be deposited in a special account in the general revenue fund which may be appropriated only to the attorney general.

Amendment No. 3 was adopted without objection.

Amendment No. 4

Representative Jackson offered the following amendment to **CSSB 3**:

Amend **CSSB 3** in SECTION 3 of the bill by striking proposed Section 6(b), Article 6675d, Revised Statutes (page 28, lines 4-6, house committee report), and substituting the following:

(b) A peace officer of any of the following municipalities is eligible to apply for certification under this section:

(1) a municipality with a population of 100,000 or more;

(2) a municipality with a population of 25,000 or more any part of which is located in a county with a population of 2.4 million or more; or

(3) a municipality any part of which is located in a county bordering the United Mexican States.

Amendment No. 4 was adopted without objection.

Amendment No. 5

Representative Chisum offered the following amendment to **CSSB 3**:

Amend **CSSB 3** by striking Section 28 of this bill and renumbering all following sections appropriately.

Representative Seidlits moved to table Amendment No. 5.

The motion to table was lost.

Amendment No. 5 was adopted.

CSSB 3, as amended, was passed to third reading.

SB 440 ON SECOND READING
(Gallego - House Sponsor)

The speaker laid before the house, on its second reading and passage to third reading, the complete committee substitute for **SB 440**.

CSSB 440, A bill to be entitled An Act relating to procedures for applying for a writ of habeas corpus by persons convicted of a felony and procedures for the compensation and appointment of counsel to represent certain persons charged with a capital felony.

CSSB 440 was read second time.

Amendment No. 1

Representative Gallego offered the following amendment to **CSSB 440**:

Amend **CSSB 440** in Section 9 of the bill, on page 24, line 18, by striking "\$5,000,000" and substituting "\$2,000,000".

Amendment No. 1 was adopted without objection.

Amendment No. 2

Representative Hartnett offered the following amendment to **CSSB 440**:

Amend **CSSB 440** by adding an appropriately numbered SECTION to read as follows and by renumbering existing SECTIONS accordingly:

SECTION _____. (a) Article 35.16, Code of Criminal Procedure, is amended by adding Subsection (d) to read as follows:

(d) For the purposes of Subsection (b), in a capital case in which the state seeks the death penalty a prospective juror has a bias or prejudice against a phase of the law on which the state is entitled to rely for punishment if the prospective juror would require evidence in excess of the minimum evidence legally required to answer a special issue under Article 37.071 or 37.0711 in a manner beneficial to the state.

(b) The change in law made by this section to Article 35.16, Code of Criminal Procedure, applies only to challenges for cause in a capital case in which the venire is summoned on or after the effective date of this Act. If a venire in a capital case is summoned before the effective date of this Act, challenges for cause are covered by the law in effect when the venire was summoned, and the former law is continued in effect for that purpose.

Representative Gallego moved to table Amendment No. 2.

The motion to table was withdrawn.

Amendment No. 2 was withdrawn.

A record vote was requested.

CSSB 440, as amended, was passed to third reading by (Record 461): 124 Yeas, 19 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carona; Carter; Chisum; Clemons; Coleman; Combs; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; De La Garza; Dear; Delisi; Denny; Driver; Duncan; Eiland; Elkins; Finnell; Gallego; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, R.; Luna; Madden; Marchant; McCall; McCoulskey; McDonald; Moffat; Mowery; Munoz; Nixon; Oakley; Ogden; Oliveira; Park; Patterson; Pitts; Place; Puente; Rabuck; Ramsay; Raymond; Reyna; Rhodes; Rodriguez; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solis; Solomons; Stiles; Swinford; Talton; Telford; Tillery; Turner, B.; Turner, S.; Uher; Walker; West; Williamson; Willis; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost; Zbranek.

Nays — Alonzo; Davis; Dutton; Ehrhardt; Farrar; Giddings; Jones, J.; Lewis, G.; Longoria; Maxey; Moreno; Naishtat; Pickett; Price; Rangel; Romo; Thompson; Torres; Wilson.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Staples.

Absent — Conley; Dukes; Edwards; Hudson; Van de Putte.

MESSAGE FROM THE SENATE

Austin, Texas, May 18, 1995

The Honorable Speaker of the House of Representatives
House Chamber

The Honorable
Mr. Speaker:

I am directed by the Senate to inform the House that the Senate has passed the following:

HCR 212 by Talton (Sponsor-Patterson, Jerry), instructing the enrolling clerk of the House to make technical corrections in H.B. 2015.

HJR 73 by Romo (Sponsor-Moncrief), proposing a constitutional amendment reducing the amount of general obligation bonds authorized for the issuance for undertakings related to a superconducting super collider research facility.

HB 418 by Goodman, Thompson, and Combs (Sponsor-Harris, Chris), relating to protective orders for family violence; providing penalties (committee substitute).

HB 546 by Brimer and Crabb (Sponsor-Harris, Chris), relating to the exclusion of unserved property from certain water conservation and reclamation districts (committee substitute).

HB 1111 by Naishtat and Hilderbran (Sponsor-Rosson), relating to the provision of protective services to persons who are elderly or disabled (amended).

HB 1320 by Romo (Sponsor-Moncrief), relating to unissued general obligation and revenue bonds of the state.

HB 1422 by Reyna (Sponsor-Leedom), relating to certain fees charged by local recording agents and insurers.

HB 2387 by Johnson (Sponsor-Ratliff), relating to the regulation of retail water or sewer service utilities.

HB 2726 by Romo (Sponsor-Montford), relating to tax-exempt private activity bonds and housing finance corporations (committee substitute).

HB 2987 by Seidlits (Sponsor-Brown), relating to the authority of the supreme court to adopt rules relating to the contractual relationship between an attorney and client.

Respectfully,
Betty King
Secretary of the Senate

RULES SUSPENDED

Representative Seidlits moved to suspend the 5-day posting rule to allow the Committee on State Affairs to consider **SB 1099** and **SB 1677**.

The motion prevailed without objection.

COMMITTEE MEETING ANNOUNCEMENTS

The following committee meetings were announced:

Natural Resources, on recess today, Desk 23.

Urban Affairs, on recess today, Desk 73.

Environmental Regulation, on recess today, Desk 98.

Pensions and Investments, on recess today, Desk 54, to consider **SB 91**.

State, Federal, and International Relations, on recess today, Desk 47, to consider **SB 528**, **HCR 205**, **HCR 209**, and **HR 789**.

Financial Institutions, on recess today, Desk 27, to consider pending business and senate bills.

State Affairs, on recess today, speakers committee room, to consider pending business.

Civil Practices, on recess today, Desk 32.

Transportation, on recess today, Desk 22.

Conference committee on HB 1863, 1:00 p.m. today, E2.010, Capitol Extension.

RECESS

Representative Saunders moved that the house recess until 2:15 p.m. today.
The motion prevailed without objection.

The house accordingly, at 12:39 p.m., recessed until 2:15 p.m. today.

AFTERNOON SESSION

The house met at 2:15 p.m. and was called to order by the speaker.

HR 954 - ADOPTED

Representative Pitts moved to suspend all necessary rules to take up and consider at this time **HR 954**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By Pitts,

HR 954, In memory of Wilbert H. Meischen.

The resolution was read and was unanimously adopted by a rising vote.

On motion of Representatives Uher, Crabb, Carter, and Ramsay, the names of all the members of the house were added to **HR 954** as signers thereof.

INTRODUCTION OF GUESTS

The speaker recognized Representative Pitts, who introduced the family of Wilbert H. Meischen

HR 980 - ADOPTED

Representative Carona moved to suspend all necessary rules to take up and consider at this time **HR 980**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By Carona,

HR 980, Congratulating John Martin Head and Brenda Michelle Jucht on their wedding vows.

The resolution was adopted without objection.

MESSAGE FROM THE SENATE

Austin, Texas, May 18, 1995

The Honorable Speaker of the House of Representatives
House Chamber

The Honorable
Mr. Speaker:

I am directed by the Senate to inform the House that the Senate has passed the following:

HCR 214 by Hamric (Sponsor-Henderson), commending the students of Klein Forest High School and designating May 19, 1995, as a Day of Hope and Healing in Texas.

HB 752 by Rhodes, et al. (Sponsor-Armbrister), relating to eligibility for certain law enforcement training programs and examinations (amended).

HB 1551 by Greenberg (Sponsor-Moncrief), relating to judicial training in family violence, sexual assault, and child abuse issues (amended).

HB 1785 by Kuempel (Sponsor-Armbrister), relating to certain Parks and Wildlife Department admissions fees, license requirements, and exemptions (amended).

Respectfully,
Betty King
Secretary of the Senate

LEAVES OF ABSENCE GRANTED

The following members were granted leaves of absence temporarily for today to attend a meeting of the conference committee on HB 1863:

Hilderbran on motion of Uher.

Maxey on motion of Uher.

Denny on motion of Uher.

Thompson on motion of Uher.

Oliveira on motion of Uher.

SB 95 ON THIRD READING (Hilderbran - House Sponsor)

The speaker laid before the house, on its third reading and final passage,

SB 95, A bill to be entitled An Act relating to the recall of an elected official in a general-law municipality.

The bill was read third time and was passed.

SB 1135 ON SECOND READING (Stiles - House Sponsor)

The speaker laid before the house, on its second reading and passage to third reading,

SB 1135, A bill to be entitled An Act relating to the Commission on Law Enforcement Officer Standards and Education.

The bill was read second time and was passed to third reading.

SB 488 ON SECOND READING (Bosse - House Sponsor)

The speaker laid before the house, on its second reading and passage to third reading,

SB 488, A bill to be entitled An Act relating to a contractual lien for surveying or engineering services.

The bill was read second time.

Amendment No. 1

Representative Bosse offered the following amendment to the bill:

Amend **SB 488** by striking all below the enacting clause and substituting the following:

SECTION 1. Section 53.021(c), Property Code, is amended to read as follows:

(c) An architect, engineer, or surveyor who prepares a plan or plat under or by virtue of a written contract with the owner or the owner's agent, trustee, or receiver, in connection with the actual or proposed design, construction, or repair of improvements on real property or the location of the boundaries of real property, has a lien on the property if:

~~[(1) the architect, engineer, or surveyor prepares the plan or plat pursuant to a written contract, in recordable form, that contains a legal description of the real property on which the construction is to be performed;~~

~~[(2) the contract is recorded with the county clerk of the county in which the property is located before the date construction is commenced; and~~

~~[(3) the plan or plat prepared by the architect, engineer, or surveyor asserting the lien is used in performing such construction].~~

SECTION 2. Section 53.023, Property Code, is amended to read as follows:

Sec. 53.023. PAYMENT SECURED BY LIEN. The lien secures payment for:

(1) the labor done or material furnished for the construction or repair;
[or]

(2) the specially fabricated material, even if the material has not been delivered or incorporated into the construction or repair, less its fair salvage value; or

(3) the preparation of a plan or plat by an architect, engineer, or surveyor in accordance with Section 53.021(c).

SECTION 3. Section 53.053(a), Property Code, is amended to read as follows:

(a) For purposes of Section 53.052, indebtedness accrues on a contract under which a plan or plat is prepared, labor was performed, materials furnished, or specially fabricated materials are to be furnished in accordance with this section.

SECTION 4. Section 53.122(a), Property Code, is amended to read as follows:

(a) Except as provided by Subchapter E and Section 53.124(e), perfected mechanic's liens are on equal footing without reference to the date of filing the affidavit claiming the lien.

SECTION 5. Section 53.124, Property Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) Except as provided by Subsection (e), for [For] purposes of Section 53.123, the time of inception of a mechanic's lien is the commencement of construction of improvements or delivery of materials to the land on which the improvements are to be located and on which the materials are to be used.

(e) The time of inception of a lien of an architect, engineer, or surveyor

that is created under Section 53.021(c) is the date of recording of an affidavit of lien under Section 53.052. The priority of a lien claimed by an architect, engineer, or surveyor with respect to other mechanic's liens is determined by the date of recording. A lien created under Section 53.021(c) is not valid or enforceable against a grantee or purchaser who acquires an interest in the real property before the time of inception of the lien.

SECTION 6. Section 53.021(d), Property Code, is repealed.

SECTION 7. (a) The changes in law made by this Act apply only to a lien of an architect, engineer, or surveyor who prepares a plan or plat under a contract entered into on or after the effective date of this Act.

(b) A lien of an architect, engineer, or surveyor who prepares a plan or plat under a contract entered into before the effective date of this Act is governed by the law as it existed on the date on which the contract was entered into, and the former law is continued in effect for that purpose.

SECTION 8. This Act takes effect September 1, 1995.

SECTION 9. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Amendment No. 1 was adopted without objection.

SB 488, as amended, was passed to third reading.

SB 472 ON SECOND READING (Craddick - House Sponsor)

The speaker laid before the house, on its second reading and passage to third reading,

SB 472, A bill to be entitled An Act relating to the waiver of the visual standards for a commercial driver's license to operate a commercial motor vehicle only in this state.

The bill was read second time.

Amendment No. 1

Representative Wohlgemuth offered the following amendment to the bill:

Amend **SB 472** as follows:

page 1, line 10 after "standards" insert ", except the standards for distant binocular acuity,"

Amendment No. 1 was adopted without objection.

SB 472, as amended, was passed to third reading.

(Maxey now present)

SB 512 ON SECOND READING (Dutton - House Sponsor)

The speaker laid before the house, on its second reading and passage to third reading, the complete committee substitute for **SB 512**.

CSSB 512, A bill to be entitled An Act relating to payment for a statement of facts in a suit affecting the parent-child relationship.

CSSB 512 was read second time.

Amendment No. 1

Representatives Dutton and Chisum offered the following amendment to **CSSB 512**:

Amend **CSSB 512** by adding a new subsection in Section 1 as follows:
____. RESTRICTIONS ON PAYMENTS. Nothing in this section shall be construed to permit an official court reporter to be paid more than once for the preparation of the statement of facts.

Amendment No. 1 was adopted without objection.

CSSB 512, as amended, was passed to third reading.

SB 1446 ON SECOND READING
(Alexander - House Sponsor)

The speaker laid before the house, on its second reading and passage to third reading,

SB 1446, A bill to be entitled An Act relating to the regulation of certain motor vehicle dealers and to the sale, titling, and registration of certain motor vehicles.

The bill was read second time.

Amendment No. 1

Representative Glaze offered the following amendment to the bill:

Amend **SB 1446** as follows:

(1) On page 7, beginning on line 14, delete subdivision (xi) and replace it with the following:

~~(xi) [(vii)] In addition to other requirements provided by law, the Department may not issue or renew a general distinguishing number as a motor vehicle dealer or a wholesale motor vehicle auction to an applicant until the applicant shows proof satisfactory to the Department that the applicant has complied with Article 6686-2, Revised Statutes. [purchased a properly executed surety bond in the amount of \$25,000 with good and sufficient surety approved by the Department. The bond shall be approved as to form by the attorney general and shall be conditioned on the applicant's payment of all valid bank drafts, including checks, drawn by the applicant for the purchase of motor vehicles and the applicant's transfer of good title to each motor vehicle the applicant offers for sale. In lieu of the bond otherwise required by this subdivision, the Department may accept and receive the pledge of cash, a cash deposit, a certificate of deposit, or other instrument determined by the Department to be adequate security for the obligations of the bond. Recovery against the bond or other security may be made by a person who obtains a judgment against a dealer or wholesale motor vehicle auction assessing damages and reasonable attorney's fees for an act or omission on which the bond is conditioned if the act or omission occurred during the term for which the~~

general distinguishing number will be valid. The liability imposed on the surety under this section is limited to the face amount of the bond for the amount of the valid bank drafts, including checks, drawn by the applicant for the purchase of motor vehicles or the amount paid to the applicant for the motor vehicle for which good title was not delivered, and for attorney's fees which are reasonable in relation to the work performed and which are incurred in the recovery of a judgment for an act or omission on which the bond was conditioned. The surety on a bond shall not be liable for successive claims in excess of the bond amount, regardless of the number of claims made against the bond or the number of years the bond remains in force.] The requirements of this subdivision do not apply to a person licensed as a franchise motor vehicle dealer by the Motor Vehicle Board of the Texas Department of Transportation.

(2) On page 12, line 24, after the word "year." and before the word "SECTION" on line 25, insert a new SECTION 5 and renumber the subsequent sections accordingly:

SECTION 5. Chapter 1, Title 116, Revised Statutes, is amended by adding Article 6686-2 to read as follows:

Art. 6686-2. MOTOR VEHICLE TRANSACTION RECOVERY FUND

Sec. 1. DEFINITIONS. In this article:

(1) "Applicant" means a person who applies for issuance or renewal of a license.

(2) "Department" means the Texas Department of Transportation.

(3) "Executive director" means the executive director of the Texas Department of Transportation or an employee of the department designated by the executive director.

(4) "Fund" means the Motor Vehicle Transaction Recovery Fund.

(5) "Judgment creditor" means a person who is eligible under Section 3 of this article for recovery from the fund.

(6) "License" means:

(A) a general distinguishing number issued by the department under Section (a)(1-A), Article 6686, Revised Statutes; or

(B) a wholesale motor vehicle auction general distinguishing number issued by the department under Section (a)(2-A), Article 6686, Revised Statutes.

(7) "License holder" means a person who holds a license.

(8) "Person" means an individual, corporation, partnership, firm, or other legal entity.

Sec. 2. ASSESSMENT; EXEMPTION. (a) In addition to other fees required by law, an applicant shall pay an assessment of \$350 before issuance of a license. Except as provided by Subsection (c) of this section, an applicant shall pay an initial assessment plus additional assessments payable at the time of license renewal for three consecutive renewal periods until the license holder has paid assessments totaling \$1,400. The department shall use the assessments to establish the fund.

(b) The department shall deposit all assessments for the fund in a special account in the state treasury, to be used only to pay claims against the fund and costs directly related to the administration of the fund. Interest earned on money deposited in the fund accrues to the fund. The executive director shall

administer the fund and maintain an accurate record of all transactions involving the fund.

(c) If, on the fourth anniversary of the date the fund is established the balance of the fund is less than \$10 million, each applicant and license holder shall at the time of issuance or renewal of a license pay an additional assessment in the amount provided by Subsection (a) of this section until the fund balance is at least \$10 million.

(d) A person licensed by the Motor Vehicle Board of the Texas Department of Transportation as a franchise motor vehicle dealer is not required to pay an assessment.

Sec. 3. RECOVERY FROM FUND. (a) Recovery from the fund may be made by a person other than a person who floorplanned the motor vehicle(s) in question for the applicant or license holder who obtains a final judgment that is enforceable in the courts of this state against an applicant or license holder and that assesses damages for an act or omission arising from the applicant's or license holder's failure to pay a draft, including checks, drawn for the purchase of a vehicle or the applicant's or license holder's failure to deliver good title.

(b) Recovery from the fund entitles a person to recover attorney's fees that are included as part of the final judgment and have been determined by the court to be reasonable in relation to the work performed and are incurred in the recovery of the judgment.

(c) The fund is not liable for payment of that portion of a final judgment against an applicant or license holder that is awarded for punitive or exemplary damages.

(d) A judgment creditor may file a claim with the executive director requesting payment from the fund of the amount of the unpaid judgment. For payment under this article, the judgment creditor must file the claim after the 30th day after the date on which the judgment is final and before the first anniversary of that date.

(e) A claim filed pursuant to this section must be submitted on a form approved by the department and must include a document issued by the clerk of the trial court certifying that the judgment is final.

Sec. 4. MAXIMUM CLAIMS. (a) Except as provided by subsection (b) of this section, the maximum claim that a single judgment creditor may present against the fund based on an unpaid final judgment involving a single motor vehicle is \$50,000.

(b) The maximum aggregate of claims that a single judgment creditor may present against the fund involving the same applicant or license holder in any 12-month period is \$100,000.

(c) If the executive director has reasonable grounds to suspect that an additional claim may be made against the fund involving the same applicant or license holder, the executive director, for a period not to exceed 90 days after the receipt of the claim, may withhold payment from the fund with respect to a transaction involving that applicant or license holder. After the expiration of that period, the executive director shall pay all claims in full to the maximum as provided in subsection (b) of this section, unless the claims in the aggregate exceed \$200,000. If the aggregate of claims against the applicant or license

holder exceeds \$200,000, the executive director shall pay from the fund each claimant's pro rata share of \$200,000 in proportion to the amounts of the unpaid final judgments against the applicant or license holder.

(d) Before payment of a claim from the fund, the claimant shall assign to the department the claimant's right to recover from the affected applicant or license holder the amount that the claimant is to be compensated from the fund. On the claimant's execution and delivery to the executive director of that assignment, the executive director shall pay to the claimant from the fund the lesser of the amount of the unpaid final judgment or the maximum amount allowed under this section.

Sec. 5. REIMBURSEMENT REQUIRED. On payment under this article, the executive director shall immediately notify the applicant or license holder in writing, return receipt requested, of the payment to the claimant and demand that the applicant or license holder fully reimburse the fund or request a hearing not later than the 30th day after the date of the receipt of the notification. If the applicant or license holder does not reimburse the fund in full or request a hearing within that period, the executive director shall immediately revoke the license of the applicant or license holder whose violation of this article resulted in the payment from the fund. A person whose license is revoked is not eligible for a new license as a dealer or wholesale motor vehicle auction until the person has reimbursed in full the amount paid from the fund on the person's behalf, plus interest computed at the rate of eight percent per year from the date of payment from the fund to the claimant until the date on which the person reimburses the fund in full. Hearings required by this section shall be conducted by the Motor Vehicle Board of the department.

Sec. 6. RULES; FORMS. The department may adopt rules and prescribe forms as necessary to implement this article.

SECTION 6. (a) The change in the law made by this Act to Section (a)(1-A)(vii), Article 6686, Revised Statutes, applies only to the issuance or renewal of a general distinguishing number as a dealer or a wholesale motor vehicle auction on or after the effective date of this Act.

(b) The bond requirement of Section (a)(1-A)(vii), Article 6686, Revised Statutes, as amended by this Act, continues to apply to a general distinguishing number as a dealer or a wholesale motor vehicle auction in effect on the effective date of this Act until the general distinguishing number expires or is renewed, and that previous law continues in effect for that purpose.

(Black in the chair)

Representative Wolens moved to table Amendment No. 1.

The motion to table prevailed.

SB 1446 was passed to third reading.

SB 219 ON SECOND READING **(Saunders - House Sponsor)**

The chair laid before the house, on its second reading and passage to third reading,

SB 219, A bill to be entitled An Act relating to community assistance and

economic development program activities of certain river authorities; validating certain actions and instruments of the river authorities.

The bill was read second time and was passed to third reading.

SB 651 ON SECOND READING

(Kuempel - House Sponsor)

The chair laid before the house, on its second reading and passage to third reading,

SB 651, A bill to be entitled An Act relating to an exemption from the requirement to obtain a water use permit for certain reservoirs used in surface coal mining operations.

The bill was read second time and was passed to third reading.

SB 921 ON SECOND READING

(Bosse - House Sponsor)

The chair laid before the house, on its second reading and passage to third reading,

SB 921, A bill to be entitled An Act relating to the regulation of certain persons engaged in the business of motor vehicle leasing.

The bill was read second time and was passed to third reading. (Chisum and Corte recorded voting no)

(Oliveira now present)

SB 1017 ON SECOND READING

(R. Lewis - House Sponsor)

The chair laid before the house, on its second reading and passage to third reading, the complete committee substitute for **SB 1017**.

CSSB 1017, A bill to be entitled An Act relating to the designation of water quality protection zones in certain areas.

CSSB 1017 was read second time.

(Denny now present)

Amendment No. 1

Representative R. Lewis offered the following amendment to **CSSB 1017**:

Amend **CSSB 1017** as follows:

(1) On page 7, line 15, insert "surface" after "or" and before "reservoir".

Amendment No. 1 was adopted without objection.

Amendment No. 2

Representative R. Lewis offered the following amendment to **CSSB 1017**:

Amend **CSSB 1017** as follows:

(1) On page 3, line 12, strike "that has extended a water pollution control and abatement program to its area of extraterritorial jurisdiction".

(2) On page 4, line 9, insert the following after "quasi-public land" and before the period: ", or is part of an integrated development under common ownership or control"

(3) On page 6, line 1, insert the following sentence after the period: "The water quality plan, or any amendment thereto, shall be effective upon recordation of the plan or the amendment, in the deed records, and shall apply during the period of review and approval by the commission or appeal of the denial of the plan or any amendment."

(4) On page 7, line 15, insert "surface" after "area of a" and before "lake".

(5) On page 7, line 15, insert "surface" after "or" and before "reservoir".

(6) On page 7, line 15, insert the following after "reservoir" and before the period: "that impounds at least 4,000 acre feet of water".

(7) On page 7, line 18, insert the following after "agreement" and before "between": "entered into after the effective date of this Act".

Amendment No. 2 was adopted without objection.

CSSB 1017, as amended, was passed to third reading. (Greenberg, Maxey, Oliveira, and Price recorded voting no)

SB 1654 ON SECOND READING **(Counts - House Sponsor)**

The chair laid before the house, on its second reading and passage to third reading,

SB 1654, A bill to be entitled An Act relating to the exemption from ad valorem taxation of real property owned by certain organizations chartered by the Congress of the Republic of Texas.

The bill was read second time and was passed to third reading.

SB 572 ON SECOND READING **(Naishtat - House Sponsor)**

The chair laid before the house, on its second reading and passage to third reading,

SB 572, A bill to be entitled An Act relating to court-ordered mental health services.

The bill was read second time.

Amendment No. 1

Representative Naishtat offered the following amendment to the bill:

Amend **SB 572** by adding the following appropriately numbered sections to read as follows and renumbering subsequent sections accordingly:

SECTION _____. Section 574.034(f), Health and Safety Code, is amended to read as follows:

(f) A judge may not issue an order for temporary mental health services for a proposed patient who is charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.

SECTION _____. Section 574.035(g), Health and Safety Code, is amended to read as follows:

(g) A judge may not issue an order for extended mental health services for a proposed patient who is charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.

Amendment No. 1 was adopted without objection.

Amendment No. 2

On behalf of Representative Stiles, Representative Naishtat offered the following amendment to the bill:

Amend **SB 572** on page 6, line 14, by adding and new Section 6 to read as follows and renumbering subsequent subsections.

SECTION 6. Section 574.0085(b), Health and Safety Code, is amended to read as follows:

(b) To be eligible for appointment as a master, a person must be a resident of this state and have been licensed to practice law in this state for at least four years, or be a retired county judge, statutory or constitutional, with at least ten years of service.

Amendment No. 2 was adopted without objection.

SB 572, as amended, was passed to third reading.

(Thompson now present)

SB 124 ON SECOND READING

(McCall, De La Garza, Goodman, Danburg, Naishtat, et al. - House Sponsors)

The chair laid before the house, on its second reading and passage to third reading,

SB 124, A bill to be entitled An Act relating to notification of a victim of the offense of stalking about the release on bail of the defendant in the case.

(Speaker in the chair)

The bill was read second time and was passed to third reading.

SB 126 ON SECOND READING

(McCall, Greenberg, Combs, Danburg, Naishtat, et al. - House Sponsors)

The speaker laid before the house, on its second reading and passage to third reading,

SB 126, A bill to be entitled An Act relating to the requirement that a victim of the offense of stalking must have previously reported the stalking conduct; providing penalties.

The bill was read second time and was passed to third reading.

SB 129 ON SECOND READING

(McCall, Goodman, Danburg, Dukes, and Naishtat - House Sponsors)

The speaker laid before the house, on its second reading and passage to third reading,

SB 129, A bill to be entitled An Act relating to magistrate's orders for emergency protection for victims of family violence or the offense of stalking

and to the offense of violation of a protective order or magistrate's order for emergency protection.

The bill was read second time and was passed to third reading.

SB 351 ON SECOND READING
(R. Lewis - House Sponsor)

The speaker laid before the house, on its second reading and passage to third reading,

SB 351, A bill to be entitled An Act relating to clarifying procedures for the removal of organs or tissues from decedents when an inquest is required.

The bill was read second time.

Amendment No. 1 (Committee Amendment No. 1)

On behalf of Representative Berlanga, Representative R. Lewis offered the following committee amendment to the bill:

Amend **SB 351** as follows:

1. In SECTION 1, Section 693.002(a)(1), strike the language "believed to be clinically usable for transplants or other therapy or treatment".

2. In SECTION 1, Section 693.002(a)(3), strike the current language and substitute the following:

If an autopsy is required, and the medical examiner determines that the removal of the organ(s) will not interfere with the subsequent course of an investigation or autopsy, the organs shall be released in a timely manner for removal and transplantation. The autopsy will be performed in a timely manner following the removal of the organs.

3. In SECTION 1, Section 693.002(a)(5), add "Such reimbursements shall be deposited in the general fund of the county." after "not to exceed \$1,000."

4. In SECTION 1, Section 693.002(a)(6), strike "The report shall become part of the medical examiner's report."

Amendment No. 1 was adopted without objection.

Amendment No. 2

Representatives Combs and Munoz offered the following amendment to the bill:

Amend **SB 351** by adding a new section, appropriately numbered, to read as follows:

SECTION . Chapter 251, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, Vernon's Texas Civil Statutes), is amended by adding Section 4A to read as follows:

Sec. 4A. RELEASE OF BODY. (a) A funeral establishment that was permitted or authorized to provide funeral services for a deceased person may refuse to surrender the dead human body to another person or agent authorized to make funeral arrangements for the deceased person if the person or agent authorized to make funeral arrangements has failed to pay any costs incurred by the funeral establishment in the care and preparation for burial or transportation of the dead human body.

(b) A refusal by a funeral establishment to release a dead human body under Subsection (a) is not a violation of this Act.

Renumber subsequent sections appropriately.

Amendment No. 2 was withdrawn.

SB 351, as amended, was passed to third reading.

SB 338 ON SECOND READING
(H. Cuellar - House Sponsor)

The speaker laid before the house, on its second reading and passage to third reading, the complete committee substitute for **SB 338**.

CSSB 338, A bill to be entitled An Act relating to the termination of the parent-child relationship.

CSSB 338 was read second time and was passed to third reading.

SB 283 ON SECOND READING
(Goodman - House Sponsor)

The speaker laid before the house, on its second reading and passage to third reading, the complete committee substitute for **SB 283**.

CSSB 283, A bill to be entitled An Act relating to the authority of certain prosecuting attorneys to apply for a protective order.

CSSB 283 was read second time.

Amendment No. 1

Representative Goodman offered the following amendment to **CSSB 283**:

Amend **CSSB 283** by deleting Section 1 and inserting the following section:

SECTION 1. Section 71.04, Family Code, is amended to read as follows:

(c) The county attorney or the criminal district attorney is the prosecuting attorney responsible for filing applications under this chapter unless the ~~[-The]~~ district attorney assumes ~~[may assume]~~ the responsibility by giving notice of that assumption to the county attorney. The prosecuting attorney responsible for filing applications under this chapter shall provide notice of that responsibility to all law enforcement agencies within the jurisdiction of the prosecuting attorney. The application is to be filed as provided by Article 5.06, Code of Criminal Procedure.

Amendment No. 1 was adopted without objection.

CSSB 283, as amended, was passed to third reading.

SB 1445 ON SECOND READING
(Siebert - House Sponsor)

The speaker laid before the house, on its second reading and passage to third reading,

SB 1445, A bill to be entitled An Act relating to transfer of title to a motor vehicle, procurement of a copy of a motor vehicle certificate of title, the

collection and administration of the motor vehicle sales tax, and certain disclosures that must be made to the purchaser of a motor vehicle.

(Hilderbran now present)

The bill was read second time.

Amendment No. 1

Representative Siebert offered the following amendment to the bill:

SB 1445, House Committee Report, is amended as follows:

(1) Delete Section 3 of the bill as set forth in the House Committee Report and by insert a new Section 3 of the bill to read as follows:

SECTION 3. Chapter 152, Tax Code, is amended by adding Section 152.0411 to read as follows:

Sec. 152.0411. COLLECTION BY SELLERS. (a) A seller who makes a sale subject to the sales tax imposed by Section 152.021 shall add the amount of the tax to the sales price, and when the amount of the tax is added:

(1) it is a debt of the purchaser to the seller until paid; and

(2) if unpaid, it is recoverable at law in the same manner as the original sales price.

(b) Except as provided by this Subsection, the seller shall collect the tax from the purchaser and remit it to the tax assessor-collector in the time and manner provided by law. If the seller of a motor vehicle is not a dealer who holds a dealer general distinguishing number issued by the Texas Department of Transportation, the seller and purchaser may by agreement delegate to the purchaser or another person the functions placed on the seller by this section. A delegation made pursuant to this subsection does not relieve the seller of the legal duties placed on the seller by this section and if the motor vehicle sales tax is not remitted in the time and manner provided by law, the seller is liable for the amount of the tax due.

(c) This section applies only to the sale of a vehicle that is to be titled and registered in Texas. If a purchaser intends to register a vehicle outside Texas, the purchaser shall comply with the terms of Section 152.092

(d) This section does not apply to a seller-financed sale.

(2) On page 8, line 11 of the House Committee Report, delete the word "The" at the beginning of the line and insert the following before the word "seller": "Except as provided by this section, the".

(3) On page 8, line 20 of the House Committee Report, delete the word "The" at the beginning of the line and insert the following before the word "seller": "Except as provided by this section, the".

(4) Insert the following after page 8, line 22 of the House Committee Report:

If the seller of a motor vehicle is not a dealer who holds a dealer general distinguishing number issued by the Texas Department of Transportation, the seller and purchaser may by agreement delegate to the purchaser or another person the functions placed on the seller by this section. A delegation made pursuant to this subsection does not relieve the seller of the legal duties placed on the seller by this section.

Amendment No. 2

Representative Horn offered the following amendment to Amendment No. 1:

Amend Amendment No. 1 by Siebert to **SB 1445** as follows:

1) On page 1, lines 21-24 and on page 2, line 1 of the amendment, delete the following language:

A delegation made pursuant to this subsection does not relieve the seller of the legal duties placed on the seller by this section and if the motor vehicle sales tax is not remitted in the time and manner provided by law, the seller is liable for the amount of the tax due.

2) On page 2, lines 22-24 of the amendment, delete the following language:

A delegation made pursuant to this subsection does not relieve the seller of the legal duties placed on the seller by this section.

Amendment No. 2 was adopted without objection.

Amendment No. 1, as amended, was adopted without objection.

Amendment No. 3

Representative Seidlits offered the following amendment to the bill:

SB 1445, House Committee Report, is amended as follows:

(1) On page 2 of the House Committee Report, strike lines 20 and 21 and insert the following: "certificate of title has been surrendered in exchange for:

(i) a salvage certificate issued pursuant to the Certificate of Title Act;

(ii) a certificate of authority issued pursuant to the Texas Litter Abatement Act;

(iii) a nonrepairable motor vehicle certificate of title issued pursuant to Section 37A of the Certificate of Title Act, as added by House Bill No. 2151, 74th Legislature, Regular Session, 1995;

(iv) a comparable ownership document to those identified in Subparts (i) through (iii) of this Subdivision issued by another state or jurisdiction; or

(v) a vehicle that has been declared a total loss by an insurance company pursuant to the settlement or adjustment of a claim."

(2) On page 7, line 21 of the House Committee Report, insert the word "motor" before the word "vehicle" at both places where it appears.

(3) On page 8 of the House Committee Report, insert the following after line 22:

"(d) This section does not apply to a vehicle with respect to which the certificate of title has been surrendered in exchange for:

(i) a salvage certificate issued pursuant to the Certificate of Title Act;

(ii) a certificate of authority issued pursuant to the Texas Litter Abatement Act;

(iii) a nonrepairable motor vehicle certificate of title issued pursuant to Section 37A of the Certificate of Title Act, as added by House Bill No. 2151, 74th Legislature, Regular Session, 1995;

(iv) a comparable ownership document to those identified in Subparts (i) through (iii) of this Subdivision issued by another state or jurisdiction; or

(v) a vehicle that has been declared a total loss by an insurance company pursuant to the settlement or adjustment of a claim."

(4) On page 10, line 18 of the House Committee Report, insert the word "an" before the word "agency".

Amendment No. 3 was adopted without objection.

Amendment No. 4

Representative Howard offered the following amendment to the bill:

Amend **SB 1445** (1st printing) as follows:

(1) On page 6, line 17, after "who", insert "is a motor vehicle dealer under Article 6686, Revised Statutes, and who".

(2) On page 6, line 25, strike "seller" and substitute "dealer".

(3) On page 7, line 20, strike "person" and substitute "motor vehicle dealer".

(4) On page 7, line 23, strike "seller" and substitute "dealer".

(5) On page 8, line 11, between "vehicle" and "shall", insert "who is a motor vehicle dealer under Article 6686, Revised Statutes,".

(6) On page 8, lines 13-14, strike "The seller" and substitute "and".

(7) On page 8, lines 17-18, strike "the seller by this section is solely that of the seller" and substitute "a dealer by this section is solely that of the dealer".

(8) On page 8, line 20, between "seller" and "shall", insert "who is a motor vehicle dealer under Article 6686, Revised Statutes,".

(9) On page 8, line 21, strike "the", and substitute "that".

Representative Siebert moved to table Amendment No. 4.

The motion to table was lost.

Amendment No. 4 was adopted without objection.

Amendment No. 5

Representative Hochberg offered the following amendment to the bill:

Amend **SB 1445** by adding the following appropriately numbered section to read as follows and by renumbering the remaining sections accordingly:

SECTION . Section 3, Article 6687-5, Revised Statutes, is amended to read as follows:

Sec. 3. (a) On receipt of written notice of transfer from the transferor of a motor vehicle, the Texas [State] Department of [~~Highways and Public~~] Transportation shall mark its motor vehicle records to indicate the transfer.

(b) The department may design the written notice of transfer to be part of the certificate of title for the vehicle. The form shall be provided by the department and must include a place for the transferor to state:

(1) the vehicle identification number for the vehicle;

(2) the number of the license plate issued to the vehicle, if any;

(3) the full name and address of the transferor;

(4) the full name and address of the transferee;

(5) the date the transferor delivered possession of the vehicle to the transferee;

(6) the signature of the transferor; and

(7) the date the transferor signed the form.

(c) After the date of the transfer of the vehicle shown on the records of the department, the transferee of the vehicle shown on the records is rebuttably presumed to be:

(1) the owner of the vehicle; and

(2) subject to civil and criminal liability arising out of the use, operation, or abandonment of the vehicle as the owner of the vehicle.

(d) The department may:

(1) adopt rules to implement this section; and

(2) adopt a fee for filing a notice of transfer under this section in an amount that may not exceed the lesser of the actual cost to the department of implementing this section or \$5.

(e) Nothing in this section imposes or establishes civil or criminal liability on the owner of a motor vehicle who transfers ownership of the vehicle but does not make the voluntary disclosure of the transfer to the department.

(f) This section does not require the department to issue a title to the transferee. A [However, a] title may not be issued until the transferee applies to the designated agent as provided by the Certificate of Title Act (Article 6687-1, Vernon's Texas Civil Statutes).

Amendment No. 5 was adopted without objection.

Amendment No. 6

Representative Smithee offered the following amendment to the bill:

Amend **SB 1445** by inserting the following language in both of the following places:

1) On page 11, between lines 9 and 10

2) On page 12, between lines 13 and 14

"THE DEALER'S INVENTORY TAX IS NOT A TAX THAT IS IMPOSED UPON THE BUYER BY THE LEGISLATURE OR THAT THE BUYER IS LEGALLY OBLIGATED TO PAY"

Amendment No. 6 was adopted without objection.

SB 1445, as amended, was passed to third reading. (Finnell, Horn, Howard, Rabuck, and Solomons recorded voting no)

MESSAGE FROM THE SENATE

Austin, Texas, May 18, 1995

The Honorable Speaker of the House of Representatives
House Chamber

The Honorable
Mr. Speaker:

I am directed by the Senate to inform the House that the Senate has passed the following:

SCR 154 by Truan, directing the Texas Natural Resource Conservation Commission, the Texas Water Development Board, the Texas Department of

Health, the Texas Department of Agriculture, and the Texas Parks and Wildlife Department to establish a special task force on the management of the Rio Grande under the direction of the chairman of the Texas Natural Resource Conservation Commission.

SCR 155 by Truan, respectfully urging the president to call for the coordination of existing commissions and boards relating to border health and environment.

SCR 158 by Barrientos, designating the month of May as Texas Special Olympics Summer Games Month.

SCR 159 by Barrientos, commending Brenda Shelton Olds for her 27 years of service with the Texas Legislative Reference Library.

SCR 160 by Henderson, commending the students of Klein Forest High School and designating May 19, 1995, as a Day of Hope and Healing in Texas.

I am directed by the Senate to inform the House that the Senate has concurred in House Amendments to the following: **SB 1198** by Viva Voce Vote.

Respectfully,
Betty King
Secretary of the Senate

COMMITTEE GRANTED PERMISSION TO MEET

Representative Rodriguez moved to suspend all necessary rules to allow the Committee on Local and Consent Calendars to meet while the house is in session.

The motion prevailed without objection.

COMMITTEE MEETING ANNOUNCEMENT

The following committee meeting was announced:

Local and Consent Calendars, at this time, speakers committee room.

SB 904 ON SECOND READING (Elkins - House Sponsor)

The speaker laid before the house, on its second reading and passage to third reading, the complete committee substitute for **SB 904**.

CSSB 904, A bill to be entitled An Act relating to the eligibility of certain fire and police departments to participate in the Texas Municipal Retirement System.

CSSB 904 was read second time.

Amendment No. 1

Representative Elkins offered the following amendment to **CSSB 904**:

Amend **CSSB 904** in SECTION 1 of the bill as follows:

(1) At the end of added Section 852.005(c)(1)(C), Government Code (House Committee Report, page 1, line 17), strike "and".

(2) Strike added Section 852.005(c)(2), Government Code (House Committee Report, page 1, line 18 through page 2, line 2) and substitute the following:

(2) the governing body of each municipality that is a party to the agreement has voted by ordinance or resolution to accept responsibility, in a manner to be determined by the participating municipalities, for all payments required of an obligations incurred by the department under this subtitle in the event that the interlocal cooperation agreement is dissolved or expires; and

(3) all ordinances adopted by the participating municipalities with regard to the participation are approved by the board of trustees.

Amendment No. 1 was adopted without objection.

CSSB 904, as amended, was passed to third reading.

SB 130 ON SECOND READING
(Greenberg - House Sponsor)

The speaker laid before the house, on its second reading and passage to third reading,

SB 130, A bill to be entitled An Act relating to creating the offense of transferring a handgun to a person who is the subject of a protective order and including in the law enforcement information system maintained by the Department of Public Safety information relating to protective orders.

The bill was read second time and was passed to third reading. (Chisum and Shields recorded voting no)

SB 661 ON SECOND READING
(Carona - House Sponsor)

The speaker laid before the house, on its second reading and passage to third reading,

SB 661, A bill to be entitled An Act relating to transaction fees for the use of an electronic terminal connected to a shared electronic network.

The bill was read second time and was passed to third reading.

SB 744 ON SECOND READING
(Holzheuser - House Sponsor)

The speaker laid before the house, on its second reading and passage to third reading,

SB 744, A bill to be entitled An Act relating to guaranteed energy savings projects for local governments.

The bill was read second time.

Amendment No. 1

Representative Holzheuser offered the following amendment to the bill:

Amend **SB 744** on page 2, line 6, by striking line 5 and inserting a semicolon after the word "systems" and inserting the following before the period:

- (7) electric systems improvements; or
- (8) other energy conservation-related equipment.

Amendment No. 1 was adopted without objection.

Amendment No. 2

Representative Seidlits offered the following amendment to the bill:

Amend **SB 744** by adding new Sec. 302.007 to read as follows:

Sec. 302.007. NON-CONSUMPTIVE WATER SERVICE FOR ENERGY RECOVERY SYSTEMS. The governing body of a local government or retail public utility may provide non-consumptive water service for an energy recovery system that circulates water in a closed loop and returns it to the water main.

Amendment No. 2 was adopted without objection.

SB 744, as amended, was passed to third reading.

SB 1384 ON SECOND READING
(Goodman - House Sponsor)

The speaker laid before the house, on its second reading and passage to third reading,

SB 1384, A bill to be entitled An Act relating to the recusal of judges on the supreme court.

The bill was read second time and was passed to third reading.

SB 627 ON SECOND READING
(B. Hunter and Conley - House Sponsors)

The speaker laid before the house, on its second reading and passage to third reading,

SB 627, A bill to be entitled An Act relating to authorizing the Texas State Library and Archives Commission to negotiate an agreement with the appropriate authorities in Mexico for the exchange of certain Alamo and San Jacinto battle flags.

The bill was read second time and was passed to third reading.

SB 261 ON SECOND READING
(Reyna - House Sponsor)

The speaker laid before the house, on its second reading and passage to third reading,

SB 261, A bill to be entitled An Act relating to certain charges in connection with a fine for violation of a motor vehicle law.

The bill was read second time.

Amendment No. 1

Representative Solomons offered the following amendment to the bill:

Amend **SB 261** in SECTION 1 of the bill as follows:

(1) Strike Subsection (a)(1), Article 6701d-28, Revised Statutes, as added by the bill (Committee printing page 1, lines 8-10), and substitute the following:

(1) "Delinquent fine" means a fine that has been imposed by judgment of a court of competent jurisdiction and that has not been paid before the 31st

day after the date that the court ordered the fine was due and owed to a municipality or county.

(2) Strike Subsection (b), Article 6701d-28, Revised Statutes, as added by the bill (Committee printing page 1, line 19 through page 2, line 11), and substitute the following:

(b) A court of competent jurisdiction may collect an expense fee from a person who owes a delinquent fine for a motor vehicle misdemeanor in an amount equal to the lesser of:

(1) 10 percent of the amount of the fine; or

(2) \$25.

(3) At the end of SECTION 1 of the bill (Committee printing page 2, between lines 18 and 19), insert the following:

(d) This article does not prohibit a court of competent jurisdiction, a municipality, or a county from using any other lawful means to enforce a judgment.

Amendment No. 1 was adopted without objection.

SB 261, as amended, was passed to third reading. (Thompson recorded voting no)

SB 1371 ON SECOND READING (Corte - House Sponsor)

The speaker laid before the house, on its second reading and passage to third reading,

SB 1371, A bill to be entitled An Act relating to the authority of certain political subdivisions to contract for solid waste services.

The bill was read second time.

Amendment No. 1

Representative Munoz offered the following amendment to the bill:

Amend **SB 1371** (House Committee Report) in SECTION 1 of the bill, Section 364.031, Health and Safety Code (page 2, between lines 24 and 25), by adding a new Subsection (e) to read as follows:

(e) This section does not expand the authority granted to a county under Section 364.013.

Amendment No. 1 was adopted without objection.

SB 1371, as amended, was passed to third reading.

SB 626 - REQUEST OF SENATE GRANTED

On motion of Representative Yost, the house granted the request of the senate for the appointment of a conference committee on **SB 626**.

SB 626 - APPOINTMENT OF CONFERENCE COMMITTEE

The speaker announced the appointment of the following conference committee, on the part of the house, on **SB 626**: Yost, chair, Hochberg, R. Lewis, Walker, and Bosse.

SB 707 - REQUEST OF SENATE GRANTED

On motion of Representative Serna, the house granted the request of the senate for the appointment of a conference committee on **SB 707**.

SB 707 - APPOINTMENT OF CONFERENCE COMMITTEE

The speaker announced the appointment of the following conference committee, on the part of the house, on **SB 707**: Serna, chair, Hamric, R. Lewis, Cook, and Chisum.

SB 1231 - REQUEST OF SENATE GRANTED

On motion of Representative Telford, the house granted the request of the senate for the appointment of a conference committee on **SB 1231**.

SB 1231 - APPOINTMENT OF CONFERENCE COMMITTEE

The speaker announced the appointment of the following conference committee, on the part of the house, on **SB 1231**: Telford, chair, Hightower, Wilson, Longoria, and Rangel.

HB 1792 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Junell submitted the following conference committee report on **HB 1792**:

Austin, Texas, May 12, 1995

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1792** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Bivins

Junell

Brown

Goolsby

Lucio

S. Turner

Montford

Ogden

Barrientos

Rangel

On the part of the Senate

On the part of the House

HB 1792 a bill to be entitled An Act relating to tuition, fees, and other charges at public institutions of higher education.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 54.008, Education Code, is amended by amending Subsection (a) and adding Subsections (e) and (f) to read as follows:

(a) The tuition rates provided by Subchapter B of this chapter are minimum rates. Except as provided by Subsection (e), the [The] governing board of each institution of higher education shall set tuition for graduate programs for that

institution at a rate that is at least equal to that prescribed by Subchapter B of this chapter, but that is not more than twice the rate prescribed by Subchapter B of this chapter. Between the maximum and minimum rates, the board may set the differential tuition among programs offered by an institution of higher education.

(e) The governing board of an institution of higher education shall set tuition for an optometry program at the institution at a rate that is at least equal to the rate prescribed by Subchapter B of this chapter but not more than three times the rate prescribed by Subchapter B of this chapter.

(f) The governing board of an institution of higher education shall set tuition for an undergraduate pharmacy program at the institution at a rate that is at least equal to the rate prescribed by Subchapter B of this chapter but not more than twice the rate prescribed by Subchapter B of this chapter.

SECTION 2. Sections 54.051(a), (c), (d), and (i), Education Code, are amended to read as follows:

(a) In this section:

(1) "Coordinating board" means the Texas Higher Education Coordinating Board ["Cost of education" means the applicable cost of education determined by the Coordinating Board, Texas College and University System, under Section 54.0511 of this code].

(2) "General academic teaching institution" has the meaning assigned by Section 61.003(3) of this code.

(3) "Medical and dental unit" has the meaning assigned by Section 61.003 of this code.

(4) "Public junior college" has the meaning assigned by Section 61.003(2) of this code.

(c) Unless a different rate is specified by this section, tuition for a resident student at a general academic teaching institution is the greater of:

(1) \$120 for each semester or 12-week summer session and \$60 for each six-week summer term; or

(2) \$40 [~~\$32~~] per semester credit hour.

(d) Unless a different rate is specified by this section, tuition for a nonresident student at a general academic teaching institution or medical and dental unit is an amount per semester credit hour equal to the average of the nonresident undergraduate tuition charged to a resident of this state at a public state university in each of the five most populous states other than this state, as computed by the coordinating board under this subsection [~~100 percent of the cost of education~~]. The coordinating board shall set the tuition rate provided by this subsection for each academic year and report that rate to each appropriate institution not later than January 1 of the calendar year in which the academic year begins, or as soon after that January 1 as practicable. In computing the tuition rate, the coordinating board shall use the nonresident tuition rates for the other states in effect for the academic year in progress when the board makes the computation.

(i) Tuition for a resident student registered at a law school is \$75 [~~\$60~~] per semester credit hour. Tuition for a nonresident student registered at a law school is \$200 [~~\$150~~] per semester credit hour.

SECTION 3. Sections 54.0512(b) and (h), Education Code, are amended to read as follows:

(b) Tuition for a resident student at a general academic teaching institution is the greater of \$120 [~~\$100~~] for each semester or 12-week summer session and \$60 [~~\$50~~] for each six-week summer term or:

(1) [~~for the 1991-1992 academic year, \$20 per semester credit hour;~~
[~~2~~] for the 1992-1993 academic year, \$24 per semester credit hour;
[~~3~~] for the 1993-1994 academic year, \$26 per semester credit hour;
[~~4~~] for the 1994-1995 academic year, \$28 per semester credit hour;
(2) [~~5~~] for the 1995-1996 academic year, \$30 per semester credit hour; [~~and~~]

(3) [~~6~~] for the 1996-1997 academic year, \$32 per semester credit hour;

(4) for the 1997-1998 academic year, \$34 per semester credit hour;

(5) for the 1998-1999 academic year, \$36 per semester credit hour;

(6) for the 1999-2000 academic year, \$38 per semester credit hour; and

(7) for the 2000-2001 academic year, \$40 per semester credit hour.

(h) Tuition for academic years not specifically covered by this section is at the rates provided by Section 54.051 of this code. This section expires January 1, 2002 [~~1998~~].

SECTION 4. Section 54.060(b), Education Code, is amended to read as follows:

(b) The foreign student tuition fee prescribed in this chapter does not apply to a foreign student who is a resident of a nation situated adjacent to Texas, who registers in any general academic teaching institution, as defined in Section 61.003(3) of this code, in a county immediately adjacent to the nation in which the foreign student resides or who registers in Texas A&M University—Kingsville, and, except as provided by this subsection, who demonstrates a financial need after the financial resources of the foreign student and the student's family are considered. The foreign student described in this section shall pay tuition equal to that charged Texas residents under Sections 54.051 and 54.0512 of this code. The coordinating board shall adopt rules governing the determination of financial need of students under this subsection and rules governing a pilot project to be established at general academic teaching institutions in counties that are not immediately adjacent to the nation in which the foreign student resides.

SECTION 5. Subchapter B, Chapter 54, Education Code, is amended by adding Section 54.0601 to read as follows:

Sec. 54.0601. NONRESIDENT TUITION RATES AT CERTAIN INSTITUTIONS. On the written request of the governing board of a general academic teaching institution located not more than 100 miles from the boundary of this state with another state, the Texas Higher Education Coordinating Board may set a nonresident tuition rate that is lower than the nonresident tuition rate otherwise provided by this chapter if the coordinating board determines that the lower rate is in the best interest of the institution and will not cause unreasonable harm to any other institution of higher education.

SECTION 6. Section 54.064, Education Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) A student who holds a competitive [~~academic~~] scholarship of at least \$1,000 [~~\$200~~] for the academic year or summer for which the student is

enrolled and who is either a nonresident or a citizen of a country other than the United States of America is entitled to pay the fees and charges required of Texas residents without regard to the length of time the student has resided in Texas. The student must compete with other students, including Texas residents, for the [academic] scholarship and the scholarship must be awarded by a scholarship committee officially recognized by the administration and be approved by the Texas Higher Education Coordinating Board under criteria developed by the board.

(c) Notwithstanding Subsection (a), for the 1995-1996 academic year, the amount of a competitive scholarship that qualifies a person to pay the fees and charges required of Texas residents under this section is \$500 for the academic year or summer instead of the amount provided by Subsection (a). This subsection expires January 1, 1997.

SECTION 7. Section 61.059, Education Code, is amended by adding Subsection (m) to read as follows:

(m) For an institution that charges a reduced nonresident tuition rate under Section 54.0601, the board may not include in a formula under this section funding based on the number of nonresident students enrolled at the institution in excess of 10 percent of the total number of students enrolled at the institution.

SECTION 8. Subchapter D, Chapter 54, Education Code, is amended by adding Section 54.212 to read as follows:

Sec. 54.212. TEXAS NATIONAL GUARD/ROTC STUDENTS. (a) In this section:

(1) "Exempt student" means an undergraduate student who meets all the requirements of Subsections (d) and (f).

(2) "Exemption" means exemption from tuition fees and lodging and board as described in Subsections (b) and (c).

(3) "ROTC institution" means an institution of higher education, as defined by Section 61.003, that maintains a Reserve Officers' Training Corps (ROTC).

(4) "Tuition fees" includes all dues, fees, and enrollment charges whatsoever for which exemptions may be lawfully made, including correspondence courses, general property deposit fees, and student services fees, but does not include fees or charges for lodging, board, or clothing.

(b)(1) The governing boards of ROTC institutions shall, for a period not to exceed four years, exempt from the payment of tuition fees a student selected by the ROTC institution's selection committee to receive such exemption.

(2) Participating ROTC institutions shall receive reimbursement for exempted tuition fees, lodging, and board charges and fees from appropriations made by the legislature.

(c) A student selected to receive an exemption from tuition fees shall be exempt from the ROTC institution's fees and charges for lodging and board for the first two years of enrollment.

(d) A student who is selected to receive an exemption under Subsections (b) and (c) shall be required to:

(1) be admitted to the institution's Reserve Officers' Training Corps program or be a participant in such a program;

(2) become a member of the Texas Army National Guard or the Texas Air National Guard and maintain satisfactory performance as prescribed by the adjutant general's department as a member in good standing during the term of the student's contractual obligation;

(3) possess and maintain from the date of enrollment through completion of the degree program the academic and personal conduct standards established by each ROTC institution;

(4) maintain a minimum full-time enrollment of 12 credit hours each semester, including military science courses; and

(5) accept a commission in the Texas National Guard as a second lieutenant on graduation from the ROTC institution and serve no less than four years as a commissioned officer.

(e)(1) A maximum of 150 students shall be selected each academic year to receive an exemption. The Texas Higher Education Coordinating Board, after consultation with representatives of the governing boards of ROTC institutions and the adjutant general, shall formulate and prescribe a plan governing the selection of students desiring to qualify for exemption under this section and the allocation of the exemptions available to each ROTC institution.

(2) The adjutant general and each participating ROTC institution shall make special efforts to recruit students for the program that reflect the state's ethnic, gender, and racial diversity.

(3) Each ROTC institution shall be allocated at least two exempt students each academic year. The maximum number of exempt students for each ROTC institution will be determined by the percentage of the institution's Army and Air Force Reserve Officers' Training Corps enrollment in relation to statewide Army and Air Force Reserve Officers' Training Corps enrollment. Percentages shall be calculated during the fall semester of every odd-numbered year beginning September 1, 1995. In the event an ROTC institution does not recruit its maximum percentage of exempt students, the Texas Higher Education Coordinating Board shall be informed by the ROTC institution of the number of excess exemptions and shall allocate excess exemptions to ROTC institutions which have attained maximum recruiting percentages but have additional students who are qualified under Subsection (f) to receive the exemption.

(f) Selection committees, consisting of three ROTC institution representatives designated by the commissioner of higher education, one of whom shall be a military science faculty member and a commissioned officer of the Texas National Guard appointed by the adjutant general, shall be established at ROTC institutions to review applications of students who have applied for the exemption and to determine which students qualify to receive the exemption set forth in this section. Selection of qualified students shall be based on the following factors:

(1) individual qualifications, with emphasis on the leadership, communication, and organizational abilities and skills required of commissioned officers;

(2) the financial need of the applicant;

(3) the state's ethnic, racial, and gender diversity; and

(4) projected staffing requirements for the Texas National Guard.

(g) Except in the case of an exempt student who is called into active

military service under Section 431.111, Government Code, during the student's enrollment at an ROTC institution exemption from tuition fees shall be limited to four years, and exemption from lodging and board fees and charges shall be limited to the first two years of enrollment at the institution. Extensions of the exemption shall be granted for periods of active military duty required of the student that occur during the student's four-year exemption period.

(h) To receive an exemption under this section, a student must enter into a contract with the ROTC institution granting the exemption that requires the student to repay to the state the amount of tuition, fees, and other charges for which the student receives an exemption under this section if the student does not maintain exempt status or accept a commission in the Texas National Guard as required by Subsection (d). The contract must require the student to complete the repayment not later than the fifth anniversary of the date the circumstances requiring repayment occur. The contract must provide that, instead of being required to repay the amount of tuition, fees, and other charges, a student who does not maintain exempt status or accept a commission as required by Subsection (d) may, with the approval of the selection committee of the student's ROTC institution, serve the remainder of the student's contractual obligation as an enlisted member of the Texas National Guard, subject to the student's being accepted into and maintaining membership in the Texas National Guard in the same manner as any other person. The Texas Higher Education Coordinating Board shall prescribe the form and substance of a contract entered into under this subsection. The contract must include provisions governing:

(1) the time within which the student must complete the requirements of Subsection (d) and accept a commission in the Texas National Guard as required by Subsection (d);

(2) the method of calculating the amount that the student would be required to repay and the terms for repayment if circumstances requiring repayment occur; and

(3) any other terms the coordinating board considers appropriate to require the student and the ROTC institution to comply with this section.

SECTION 9. Section 54.0511, Education Code, is repealed.

SECTION 10. (a) Except as provided by Subsections (b) and (d) of this section, this Act applies beginning with tuition, fees, and other charges imposed for the fall semester of 1995.

(b) The change in law made by this Act to Section 54.064, Education Code, applies beginning with tuition charged for the fall semester of 1995, except that a student awarded a scholarship before September 1, 1995, for a semester or term of the 1995-1996 academic year that would have made the student eligible to pay resident tuition under Section 54.064 as that section existed on January 1, 1995, is covered by Section 54.064 as that section existed on January 1, 1995, for each semester or term of the 1995-1996 academic year for which the student receives the scholarship.

(c) The Texas Higher Education Coordinating Board shall compute the nonresident tuition applicable to the 1995-1996 academic year under Section 54.051(d), Education Code, as amended by this Act, as soon as practicable after this Act takes effect. In computing that tuition rate, the board shall use

nonresident tuition rates for the other states in effect for the 1994-1995 academic year.

(d) The exemptions authorized by Section 54.212, Education Code, as added by this Act, take effect beginning with the 1996-1997 academic year. Implementation of the exemption program authorized by Section 54.212, Education Code, as added by this Act, is contingent upon appropriations being made by the legislature for the specified purposes of the program.

SECTION 11. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Representative Junell moved to adopt the conference committee report on **HB 1792**.

The motion prevailed.

HB 27 - WITH SENATE AMENDMENT

Representative Goolsby called up with a senate amendment for consideration at this time,

HB 27, A bill to be entitled An Act relating to an exemption from continuing education requirements for certain county commissioners.

On motion of Representative Goolsby, the house concurred in the senate amendment to **HB 27**. (Finnell recorded voting no)

HB 27 - TEXT OF SENATE AMENDMENT

Senate Amendment No. 1

Amend **HB 27** by striking Section 1. (Senate Committee Report, page 1, lines 13-19) and substitute the following:

Section 1. Section 81.0025, Local Government Code, is amended by adding Subsection (e) to read as follows:

(e) This section does not apply to a county commissioner who:

(1) serves in a county with a population of 1.5 million or more;

(2) has served continuously for 12 years or more; and

(3) attends at least 15 hours of staff briefing on continuing education subjects in each 12-month period as approved by the County Judges and Commissioners Association of Texas.

HB 280 - WITH SENATE AMENDMENT

Representative Swinford, called up with a senate amendment for consideration at this time,

HB 280, A bill to be entitled An Act relating to limiting the liability of certain persons for certain activity of an equine animal.

On motion of Representative Swinford, the house concurred in the senate amendment to **HB 280**.

HB 280 - TEXT OF SENATE AMENDMENT

CSHB 280, A bill to be entitled An Act relating to limiting the liability of certain persons for equine activities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 4, Civil Practices and Remedies Code, is amended by adding Chapter 87 to read as follows:

CHAPTER 87. LIABILITY FOR EQUINE ACTIVITIES

SEC. 87.001. DEFINITIONS. In this chapter:

(1) "Engages in an equine activity" means riding, handling, training, driving, assisting in the medical treatment of, being a passenger on, or assisting a participant or sponsor with an equine animal. The term includes management of a show involving equine animals. The term does not include being a spectator at an equine activity unless the spectator is in an unauthorized area and in immediate proximity to the equine activity.

(2) "Equine animal" means a horse, pony, mule, donkey, or hinny.

(3) "Equine activity" means:

(A) an equine animal show, fair, competition, performance, or parade that involves any breed of equine animal and any equine discipline, including dressage, hunter and jumper horse shows, grand prix jumping, three-day events, combined training, driving, pulling, cutting, polo, steeplechasing, English and Western performance riding, endurance trail riding and Western games, and hunting;

(B) equine training or teaching activities;

(C) boarding equine animals;

(D) riding inspecting, or evaluating an equine animal belonging to another, without regard to whether the owner receives monetary consideration or other thing of value for the use of the equine animal or permits a prospective purchaser of the equine animal to ride, inspect, or evaluate the equine animal;

(E) informal equine activity, including a ride, trip, or hunt that is sponsored by an equine activity sponsor;

(F) placing or replacing horseshoes on an equine animal; or

(G) without regard to whether the participants are compensated, rodeos and single event competitions, including team roping, calf roping, and single steer roping.

(4) "Equine activity sponsor" means:

(A) a person or group who sponsors, organizes, or provides the facilities for an equine activity, including equine facilities for a pony club, 4-H club, hunt club, riding club, therapeutic riding program, or a high school or college class, program, or activity, without regard to whether the person operates for profit; or

(B) an operator of, instructor at, or promoter for equine facilities, including a stable, clubhouse, pony ride string, fair, or arena at which an equine activity is held.

(5) "Equine professional" means a person engaged for compensation:

(A) to instruct a participant or rent to a participant an equine animal for the purpose of riding, driving, or being a passenger on the equine animal; or

(B) to rent equipment or tack to a participant.

(6) "Participant" means a person who engages in an equine activity, without regard to whether the person is an amateur or professional or whether the person pays for the activity or participates in the activity for free.

Sec. 87.002. APPLICABILITY OF CHAPTER. This chapter does not apply to an activity regulated by the Texas Racing Commission.

Sec. 87.003. LIMITATION ON LIABILITY. Except as provided by Section 87.004, any person, including an equine activity sponsor or an equine professional, is not liable for property damage or damages arising from the personal injury or death of a participant if the property damage, injury, or death results from the dangers or conditions that are an inherent risk of equine activity, including:

(1) the propensity of an equine animal to behave in ways that may result in personal injury or death to a person on or around it;

(2) the unpredictability of an equine animal's reaction to sound, a sudden movement, or an unfamiliar object, person, or other animal;

(3) certain land conditions and hazards, including surface and subsurface conditions;

(4) a collision with another animal or an object; or

(5) the potential or a participant to act in a negligent manner that may contribute to injury to the participant or another, including failing to maintain control over the equine animal or not acting within the participant's ability.

Sec. 87.004. EXCEPTIONS TO LIMITATION ON LIABILITY. A person, including an equine activity sponsor or an equine professional, is liable for property damage or damages arising from the personal injury or death caused by a participant in an equine activity if:

(1) the injury or death was caused by faulty equipment or tack used in the equine activity, the person provided the equipment or tack, and the person knew or should have known that the equipment or tack was faulty;

(2) the person provided the equine animal and the person did not make a reasonable and prudent effort to determine the ability of the participant to engage safely in the equine activity and determine the ability of the participant to safely manage the equine animal, taking into account the participant's representations of ability;

(3) the injury or death was caused by a dangerous latent condition of land for which warning signs, written notices, or verbal warnings were not conspicuously posted or provided to the participant, and the land was owned, leased, or otherwise under the control of the person at the time of the injury or death and the person knew of the dangerous latent condition;

(4) the person committed an act or omission with wilful or wanton disregard for the safety of the participant and that act or omission caused the injury; or

(5) the person intentionally caused the injury or death.

Sec. 87.005. WARNING NOTICE. (a) An equine professional shall post and maintain a sign that contains the warning contained in Subsection (c) if the professional manages or controls a stable, corral, or arena where the professional conducts an equine activity. The professional must post the sign in a clearly visible location on or near the stable, corral, or arena.

(b) An equine professional shall include the warning contained in Subsection (c) in every written contract that the professional enters into with a participant for professional services, instruction, or the rental of equipment or tack or an equine animal. The warning must be included without regard to whether the contract involves equine activities on or off the location or site of the business of the equine professional. The warning must be clearly readable.

(c) The warning must be as follows:

WARNING

UNDER TEXAS LAW (CHAPTER 87, CIVIL PRACTICE AND REMEDIES CODE), AN EQUINE PROFESSIONAL IS NOT LIABLE FOR AN INJURY TO OR THE DEATH OF A PARTICIPANT IN EQUINE ACTIVITIES RESULTING FROM THE INHERENT RISKS OF EQUINE ACTIVITIES.

SECTION 2. This Act takes effect September 1, 1995, and applies only to a cause of action accruing on or after that date. A cause of action accruing before the effective date of this Act is governed by the law in effect at the time the action accrued, and that law is continued for that purpose.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

HB 384 - WITH SENATE AMENDMENT

Representative Junell called up with a senate amendment for consideration at this time,

HB 384, A bill to be entitled An Act relating to service creditable in and eligibility for service retirement from the Employees Retirement System of Texas.

On motion of Representative Junell, the house concurred in the senate amendment to **HB 384**.

HB 384 - TEXT OF SENATE AMENDMENT

Senate Amendment No. 1

Amend **HB 384**, by striking SECTION 5 of the bill, and renumbering the remaining SECTIONs accordingly.

HB 670 - WITH SENATE AMENDMENT

Representative Telford called up with a senate amendment for consideration at this time,

HB 670, A bill to be entitled An Act relating to permitting competitive hunting dog events on certain state-controlled property.

On motion of Representative Telford, the house concurred in the senate amendment to **HB 670**.

HB 670 - TEXT OF SENATE AMENDMENT

Senate Amendment No. 1

Amend **HB 670** by deleting the words "a competitive hunting dog event,"

including a field trial, on page 1, lines 14 and 15, and inserting in lieu thereof the phrase "a competitive hunting dog field trial".

HB 949 - WITH SENATE AMENDMENT

Representative Hightower called up with a senate amendment for consideration at this time,

HB 949, A bill to be entitled An Act relating to the availability to certain incarcerated individuals of public records or personal information pertaining to certain other individuals.

On motion of Representative Hightower, the house concurred in the senate amendment to **HB 949** by (Record 462): 144 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carona; Carter; Chisum; Clemons; Coleman; Combs; Conley; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Denny; Driver; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Gallego; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Ogden; Oliveira; Park; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solis; Solomons; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williamson; Willis; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Staples.

Absent — Dukes; Jackson; Wilson; Zbranek.

HB 949 - TEXT OF SENATE AMENDMENT

Senate Amendment No. 1

Amend **HB 949** by adding the following appropriately numbered SECTIONS to read as follows and by renumbering existing SECTIONS accordingly:

SECTION _____. Chapter 38, Penal Code, is amended by adding Section 38.111 to read as follows:

Sec. 38.111. INMATE MISUSE OF INFORMATION GAINED THROUGH WORK PROGRAM. (a) An inmate of the institutional division or a person confined in a state jail felony facility commits an offense if with intent to obtain a benefit or with intent to harm or defraud another the inmate or person discloses or uses personal information about another that the inmate

or person has access to by means of participation in a work program operated by or for the institutional division or state jail division.

(b) An offense under this section is a felony of the third degree.

SECTION _____. Subchapter E, Chapter 497, Government Code, is amended by adding Section 497.097 to read as follows:

Sec. 497.097. PROHIBITION FROM PARTICIPATION IN CERTAIN WORK PROGRAMS. An inmate who has been convicted of an offense under Section 38.111, Penal Code, is prohibited from subsequently participating in any work program operated by the institutional division that provides inmates with access to personal information about persons who are not confined in the institutional division.

SECTION _____. Chapter 498, Government Code, is amended by adding Section 498.0041 to read as follows:

Sec. 498.0041. FORFEITURE FOR WORK PROGRAM VIOLATIONS. If during a term of imprisonment an inmate is convicted of an offense under Section 38.111, Penal Code, the director of the institutional division shall forfeit all or any part of the inmate's accrued good conduct time.

SECTION _____. Subchapter B, Chapter 507, Government Code, is amended by adding Section 507.028 to read as follows:

Sec. 507.028. PROHIBITION FROM PARTICIPATION IN CERTAIN WORK PROGRAMS. A defendant confined in a state jail felony facility who has been convicted of an offense under Section 38.111, Penal Code, is prohibited from subsequently participating in any work program operated by the state jail division that provides defendants with access to personal information about persons who are not confined in a state jail felony facility.

HB 1127 - WITH SENATE AMENDMENTS

Representative Hamric called up with senate amendments for consideration at this time,

HB 1127, A bill to be entitled An Act relating to the exemption from ad valorem taxation of the residence homestead of the surviving spouse of an elderly person.

Representative Hamric moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on the bill.

The motion prevailed without objection.

HB 1127 - APPOINTMENT OF CONFERENCE COMMITTEE

The speaker announced the appointment of the following conference committee, on the part of the house, on **HB 1127**: Hamric, chair, Heflin, Romo, Holzheuser, and Howard.

HB 1204 - WITH SENATE AMENDMENTS

Representative Place called up with senate amendments for consideration at this time,

HB 1204, A bill to be entitled An Act relating to the punishment for contempt of certain persons who fail to respond to a jury summons.

Representative Place moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on the bill.

The motion prevailed without objection.

HB 1204 - APPOINTMENT OF CONFERENCE COMMITTEE

The speaker announced the appointment of the following conference committee, on the part of the house, on **HB 1204**: Place, chair, Farrar, Solis, Pitts, and Pickett.

HB 1543 - WITH SENATE AMENDMENTS

Representative Marchant called up with senate amendments for consideration at this time,

HB 1543, A bill to be entitled An Act relating to the regulation of banking and of entities under the jurisdiction of state banking regulatory officials; providing administrative and criminal penalties.

On motion of Representative Marchant, the house concurred in the senate amendments to **HB 1543** by (Record 463): 141 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carona; Carter; Chisum; Clemons; Coleman; Combs; Conley; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culbertson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Denny; Driver; Duncan; Dutton; Edwards; Eiland; Elkins; Farrar; Finnell; Gallego; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Ogden; Oliveira; Park; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solis; Solomons; Stiles; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Willis; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Staples.

Absent — Dukes; Ehrhardt; Lewis, R.; Swinford; Williamson; Wilson; Zbraneck.

HB 1543 - TEXT OF SENATE AMENDMENTS

Senate Amendment No. 1

Amend **HB 1543** (House Engrossment Printing) as follows:

(1) On page 257, line 4, through page 261, line 7, strike Sections 14-18 of the bill and renumber the subsequent sections accordingly.

(2) On page 272, line 22, between "Section 38 of this Act" and "take", insert ", and Chapter 9 of the Texas Banking Act as added by this Act".

Senate Amendment No. 2.

Amend **HB 1543** in SECTION 1 of the bill, on page 10, line 15, by adding new subsection (f) to Sec. 1.011 to read as follows:

(f)(1) The Finance Commission shall:

(i) conduct research on the availability, quality, and prices of financial services, including lending and depository services, offered in the state to agricultural businesses, small businesses, and individual consumers in the state; and

(ii) conduct research on the practices of business entities in the state that provide financial services to agricultural businesses, small businesses, and individual consumers in the state.

(2) The Finance Commission shall have the authority to apply for and receive public and private grants and gifts to conduct the research authorized in this subsection.

(3) The Finance Commission shall have the authority to contract with public and private entities to carry out studies and analysis under this section.

(4) Not later than December 1 of each year, the Finance Commission shall provide to the Legislature a report detailing its findings and making recommendations to improve the availability, quality, and prices of financial services.

HB 1593 - WITH SENATE AMENDMENTS

Representative Craddick called up with senate amendments for consideration at this time,

HB 1593, A bill to be entitled An Act relating to payment for the proceeds of oil or gas production.

Representative Craddick moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on the bill.

The motion prevailed without objection.

HB 1593 - APPOINTMENT OF CONFERENCE COMMITTEE

The speaker announced the appointment of the following conference committee, on the part of the house, on **HB 1593**: Craddick, chair, Holzheuser, Wolens, Marchant, and Place.

HB 1989 - WITH SENATE AMENDMENTS

Representative Rodriguez called up with senate amendments for consideration at this time,

HB 1989, A bill to be entitled An Act relating to the underground storage of appropriated water incidental to a beneficial use.

On motion of Representative Rodriguez, the house concurred in the senate amendments to **HB 1989** by (Record 464): 144 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carona; Carter; Chisum; Clemons; Combs; Conley; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culbertson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Denny; Driver; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Gallego; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Ogden; Oliveira; Park; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solis; Solomons; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williamson; Willis; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Staples.

Absent — Coleman; Dukes; Wilson; Zbranek.

HB 1989 - TEXT OF SENATE AMENDMENTS

CSHB 1989, A bill to be entitled An Act relating to the underground storage of appropriated water incidental to a beneficial use.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The legislature finds that:

(1) the underground storage of appropriated water, incidental to a beneficial use, is a beneficial use of water;

(2) the use of aquifers for storage of appropriated water:

(A) enhances the conservation and protection of appropriated water by minimizing seepage and evaporation losses;

(B) reduces the incidental environmental impacts associated with the construction of conventional water storage facilities such as aboveground reservoirs; and

(C) enhances and protects groundwater resources;

(3) the underground storage of appropriated water maximizes the conservation and beneficial use of water resources;

(4) the storage of appropriated water in aquifers recognizes existing property rights, including the rights of a landowner in groundwater;

(5) the storage of appropriated water in aquifers recognizes the authority and jurisdiction of an underground water conservation district;

(6) the use of aquifers for storage of appropriated water may reduce a portion of the economic burden on taxpayers and utility ratepayers associated with the construction of conventional water storage facilities;

(7) the successful storage of appropriated water underground has been demonstrated in Kerr County by the Upper Guadalupe River Authority in the Hosston-Sligo Aquifer; and

(8) the Texas Natural Resource Conservation Commission and the Texas Water Development Board are encouraged to evaluate additional aquifers within the state to identify the potential for storage of appropriated water underground to maximize and enhance the future availability and beneficial use of the water resources of the state.

SECTION 2. Subchapter D, Chapter 11, Water Code, is amended by adding Sections 11.153, 11.154, and 11.155 to read as follows:

Sec. 11.153. PILOT PROJECTS FOR STORAGE OF APPROPRIATED WATER IN AQUIFERS. (a) The commission shall investigate the feasibility of storing appropriated water in various types of aquifers around the state by encouraging the issuance of temporary or term permits for pilot demonstration projects for the storage of appropriated water for subsequent retrieval and beneficial use in the following aquifers in the specified counties:

(1) the Anacacho, Austin Chalk, and Glen Rose Limestone aquifers in Bexar County and Medina County;

(2) the Carrizo-Wilcox aquifer in Bexar, Smith, Wood, Rains, and Van Zandt counties;

(3) the Hickory and Ellenberger aquifers in Gillespie County; and

(4) the Gulf Coast aquifer in Cameron and Hidalgo counties.

(b) A permit described by Subsection (a) must be for only the duration of the pilot project to provide the commission and the board further opportunity to evaluate the storage of appropriated water in aquifers for subsequent retrieval and beneficial use.

(c) At the conclusion of a pilot project, a permit holder may file an appropriate application for a permit or permit amendment. After considering the success of the project and the criteria set out in Section 11.154, the commission shall determine whether to issue a permit or permit amendment authorizing the continued storage of appropriated water in the aquifer.

(d) A final order granting a permit or amendment to a permit authorizing the storage of appropriated water in aquifers for subsequent beneficial use, other than for the pilot projects authorized by this section, may not be issued before June 1, 1999.

(e) The board shall participate in the study of the pilot projects authorized by Subsection (a). The pilot projects are eligible for grants from the water loan assistance fund established by Section 15.101. The board may authorize use of money from the research and planning fund established by Section 15.402 to participate in the study of pilot projects.

Sec. 11.154. PERMITS TO STORE APPROPRIATED WATER IN AQUIFERS. (a) An application filed with the commission to undertake a pilot project under Section 11.153 must include:

(1) the information required for an application for a permit or permit amendment to appropriate state water;

(2) all information required for an application for a permit for a Class V injection well without requiring a separate hearing or notice; and

(3) a map or plat showing the injection facility and the aquifer in which the water will be stored.

(b) If the application is for a permit or permit amendment to store appropriated water in an underground water reservoir or a subdivision of an underground water reservoir, as defined by Chapter 52, that is under the jurisdiction of an underground water conservation district:

(1) the applicant shall:

(A) provide a copy of the application to each underground water conservation district that has jurisdiction over the reservoir or subdivision;

(B) cooperate with the districts that have jurisdiction over the reservoir or subdivision to ensure compliance with the rules of each district;

(C) cooperate with each district that has jurisdiction over the reservoir or subdivision to develop rules regarding the injection, storage, and withdrawal of appropriated water stored in the aquifer; and

(D) comply with the rules governing the injection, storage, or withdrawal of appropriated water stored in the reservoir or subdivision that are adopted by a district that has jurisdiction over the reservoir or subdivision; and

(2) the commission shall require that any agreement the applicant reaches with a district that has jurisdiction over the reservoir or subdivision regarding the terms for the injection, storage, and withdrawal of appropriated water be included as a condition of the permit or permit amendment.

(c) On completion of a pilot project and receipt of an appropriate application for a permit or an amendment to an existing permit, the commission shall evaluate the success of the pilot project for purposes of issuing a final order granting a permit or permit amendment authorizing the storage of appropriated water incident to a beneficial use. The commission shall consider whether:

(1) the introduction of water into the aquifer will alter the physical, chemical, or biological quality of native groundwater to a degree that the introduction would:

(A) render groundwater produced from the aquifer harmful or detrimental to people, animals, vegetation, or property; or

(B) require treatment of the groundwater to a greater extent than the native groundwater requires before being applied to that beneficial use;

(2) the water stored in the receiving aquifer can be successfully harvested from the aquifer for beneficial use; and

(3) the permit holder has provided evidence that reasonable diligence will be used to protect the water stored in the receiving aquifer from unauthorized withdrawals to the extent necessary to maximize the permit holder's ability to retrieve and beneficially use the stored water without experiencing unreasonable loss of appropriated water.

(d) In making its evaluation under Subsection (c), the commission may consider all relevant facts, including:

(1) the location and depth of the aquifer in which the stored water is located;

(2) the nature and extent of the surface development and activity above the stored water;

(3) the permit holder's ability to prevent unauthorized withdrawals by contract or the exercise of the power of eminent domain;

(4) the existence of an underground water conservation district with jurisdiction over the aquifer storing the water and the district's ability to adopt rules to protect stored water; and

(5) the existence of any other political subdivision or state agency authorized to regulate the drilling of wells.

(e) A permit to store appropriated water in an underground water reservoir or subdivision, as defined by Chapter 52, shall provide as a condition to the permit that the permit holder shall:

(1) register the permit holder's injection and recovery wells with an underground water conservation district that has jurisdiction over the reservoir or subdivision, if any; and

(2) each calendar month, provide the district, if any, with a written report showing for the previous calendar month:

(A) the amount of water injected for storage; and

(B) the amount of water recaptured for use.

Sec. 11.155. AQUIFER STORAGE PILOT PROJECT REPORTS. (a) On completion of each pilot project, the board and the commission jointly shall:

(1) prepare a report evaluating the success of the project; and

(2) provide copies of the report to the governor, lieutenant governor, and speaker of the house of representatives.

(b) The board shall make other studies, investigations, and surveys of the aquifers in the state as it considers necessary to determine the occurrence, quantity, quality, and availability of other aquifers in which water may be stored and subsequently retrieved for beneficial use. The board shall undertake the studies, investigations, and surveys in the following order of priority:

(1) the aquifers identified in Section 11.153(a);

(2) areas designated by the commission as "critical areas" under Section 52.053; and

(3) other areas of the state in a priority to be determined by the board's ranking of where the greatest need exists.

(c) Not later than January 1 of each odd-numbered year, the board shall prepare and provide to the legislature a report that includes at least the following information:

(1) the progress of the pilot projects authorized under this subchapter and of any related project;

(2) the results of the board's studies of the other aquifers of the state during the preceding biennium; and

(3) the anticipated appropriation from general revenues necessary to investigate other aquifers in the state during the upcoming biennium.

SECTION 3. (a) The change in law made by this Act applies only to an application made on or after the effective date of this Act for a permit or a permit amendment for a pilot project to appropriate water and to store appropriated water in an aquifer identified in this Act.

(b) A permit issued by the commission authorizing the storage of appropriated water in an aquifer incident to a beneficial use before the effective date of this Act or an application for a permit or permit amendment to appropriate water that includes authorization to store appropriated water in an underground structure filed before the effective date of this Act is not affected by the changes in law made by this Act.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public

necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Senate Amendment No. 1

Amend **CSHB 1989** in Section 2 of the bill by striking proposed Section 11.153(a)(2), Water Code, and substituting:

"(2) the Carrizo-Wilcox aquifer in Bexar, Webb, Smith, Wood, Rains, and Van Zandt counties;".

HB 2062 - WITH SENATE AMENDMENTS

Representative Rodriguez called up with senate amendments for consideration at this time,

HB 2062, A bill to be entitled An Act relating to the conversion to an elected board of certain mass transit authorities.

On motion of Representative Rodriguez, the house concurred in the senate amendments to **HB 2062**.

HB 2062 - TEXT OF SENATE AMENDMENTS

Senate Amendment No. 1

Change the effective date in Section 2 on page 3 from "September 1, 1995" to "September 1, 1996."

Senate Amendment No. 2

Amend **HB 2062** by adding a new subsection (k) to read as follows:

"Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes) is amended by changing Subsection 4(e)(2)(A) to read as follows:

Sec. 4. (e)(2)(A) in addition to the methods of removal of board members provided by Subdivisions (1) and (4) of this subsection, board members of an authority in which the rate of the sales and use tax is one percent and whose principal city has a population of more than 1,200,000 according to the most recent census and of an authority created before January 1, 1980, with a principal city having a population of less than 1,200,000 are subject to recall procedure provided for by this subdivision."

HB 2151 - WITH SENATE AMENDMENTS

Representative Bosse called up with senate amendments for consideration at this time,

HB 2151, A bill to be entitled An Act relating to the issuance of titles to certain motor vehicles; providing a penalty.

On motion of Representative Bosse, the house concurred in the senate amendments to **HB 2151**.

HB 2151 - TEXT OF SENATE AMENDMENTS

CSHB 2151, A bill to entitled An Act relating to the issuance of titles to certain motor vehicles; providing a penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Certificate of Title Act (Article 6687-1, Vernon's Texas Civil Statutes) is amended by adding Section 37A to read as follows:

Sec. 37A. (a) In this section:

(1) "Actual cash value" means the market value of a motor vehicle as determined:

(A) from publications commonly used by the automotive and insurance industries to establish the value of motor vehicles; or

(B) if the entity determining the value is an insurance company, by any other procedure recognized by the insurance industry, including market surveys, that is applied by the company in a uniform manner.

(2) "Automobile recycler" means a person in the business of dealing in salvage motor vehicles for the purpose of dismantling the vehicles to sell used parts or a person otherwise engaged in the business of acquiring, selling, or dealing in salvage parts for reuse or resale as parts. The term includes a dealer in used motor vehicle parts.

(3) "Casual sale" means the sale at auction of not more than one nonrepairable motor vehicle or late model salvage motor vehicle to the same person during a calendar year.

(4) "Insurance company" means a person authorized to write automobile insurance in Texas or an out-of-state insurance company that pays a loss claim for a motor vehicle in Texas.

(5) "Late model motor vehicle" means a motor vehicle with a model year equal to the then current calendar year or one of the five preceding calendar years.

(6) "Late model salvage motor vehicle" or "salvage motor vehicle" means a late model motor vehicle, other than a late model vehicle that is a nonrepairable motor vehicle, that is damaged to the extent that the total estimated cost of repairs, other than repairs related to hail damage but including parts and labor, is equal to or greater than an amount equal to 75 percent of the actual cash value of the vehicle in its predamaged condition.

(7) "Major component part" means one of the following parts of a motor vehicle:

(A) the engine;

(B) the transmission;

(C) the frame;

(D) the right or left front fender;

(E) the hood;

(F) a door allowing entrance to or egress from the passenger compartment of the vehicle;

(G) the front or rear bumper;

(H) the right or left quarter panel;

(I) the deck lid, tailgate, or hatchback;

(J) the cargo box of a pickup truck;

(K) the cab of a truck; or

(L) the body of a passenger vehicle.

(8) "Nonrepairable motor vehicle" means a late model motor vehicle that is damaged or missing a major component part to the extent that the total

estimated cost of repairs to rebuild or reconstruct the vehicle, including parts and labor other than the costs of materials and labor for repainting the vehicle and excluding sales taxes on the total cost of the repairs, and excluding the cost of repairs to repair hail damage, is equal to or greater than an amount equal to 95 percent of the actual cash value of the vehicle in its predamaged condition.

(9) "Nonrepairable motor vehicle certificate of title" means a document issued by the department that evidences ownership of a nonrepairable motor vehicle. A nonrepairable motor vehicle certificate of title for a vehicle that is nonrepairable because of damage caused exclusively by flood must bear an appropriate notation on its face.

(10) "Older model motor vehicle" means a motor vehicle that was manufactured in a model year before the sixth preceding model year, including the current model year.

(11) "Other negotiable evidence of ownership" means a document other than a Texas certificate of title or a salvage certificate of title that relates to a motor vehicle that the department considers sufficient to support issuance of a Texas certificate of title for the vehicle.

(12) "Out-of-state buyer" means a person licensed by another state or jurisdiction in an automotive business if the Texas Department of Transportation has listed the holders of such license as permitted purchasers of salvage motor vehicles or nonrepairable motor vehicles based on substantially similar licensing requirements and on whether salvage vehicle dealers licensed in Texas are permitted to purchase salvage motor vehicles or nonrepairable motor vehicles in the other state or jurisdiction.

(13) "Person" means an individual, firm, corporation, company, partnership, or other entity.

(14) "Rebuilder" means a person that acquires and repairs, for operation on public highways, five or more late model salvage motor vehicles in any 12-month period.

(15) "Salvage motor vehicle certificate of title" means any document issued by the department that evidences ownership of a salvage motor vehicle. A salvage motor vehicle certificate of title for a vehicle that is a salvage motor vehicle because of damage caused exclusively by flood must bear an appropriate notation on its face.

(16) "Salvage vehicle dealer" has the meaning assigned by Section 1.01, Article 6687-1a, Revised Statutes.

(b)(1) An insurance company that is licensed to conduct business in this state and that acquires ownership of a late model salvage motor vehicle through payment of a claim shall surrender a properly assigned certificate of title to the department, on a form prescribed by the department.

(2) For a vehicle described by Subsection (a)(6) of this section but not by Subsection (a)(8) of this section, the insurance company shall apply for a salvage motor vehicle certificate of title. For a vehicle described by Subsection (a)(8) of this section, the insurance company shall apply for a nonrepairable motor vehicle certificate of title.

(3) An insurance company may not sell a late model salvage motor vehicle to which this subsection applies unless the department has issued a

salvage motor vehicle certificate of title or a nonrepairable motor vehicle certificate of title for the vehicle or a comparable ownership document has been issued by another state or jurisdiction for the vehicle.

(4) An insurance company may sell a late model salvage motor vehicle to which this subsection applies, or assign a salvage motor vehicle certificate of title or a nonrepairable motor vehicle certificate of title for the vehicle, only to a salvage vehicle dealer, an out-of-state buyer, a buyer in a casual sale at auction, or a person described by Subsection (g), Article 6687-2b, Revised Statutes. If the vehicle is not a late model salvage motor vehicle or a nonrepairable motor vehicle, the insurance company is not required to surrender the regular certificate of title for the vehicle or to be issued a salvage motor vehicle certificate of title or a nonrepairable motor vehicle certificate of title for the vehicle.

(5) If an insurance company acquires ownership of a motor vehicle other than a late model salvage motor vehicle or a nonrepairable motor vehicle through payment of a claim, the company shall, on delivery of the vehicle to a buyer of the vehicle, deliver the buyer a properly assigned certificate of title for the vehicle. An insurance company or other person who acquires ownership of a motor vehicle other than a late model salvage motor vehicle or a nonrepairable motor vehicle may voluntarily and upon proper application obtain a salvage motor vehicle certificate of title or a nonrepairable motor vehicle certificate of title for the vehicle.

(6) This subsection does not apply to a vehicle that has been stolen and recovered unless the damage to the vehicle causes the vehicle to be a salvage motor vehicle or a nonrepairable motor vehicle.

(c)(1) If after payment of a total loss claim on a late model salvage motor vehicle or a nonrepairable motor vehicle an insurance company does not acquire ownership of the vehicle, the insurance company shall submit to the department, before the 31st day after the date of the payment of the claim, on the form prescribed by the department, a report stating that:

(A) the insurance company has paid a total loss claim on the vehicle; and

(B) the insurance company has not acquired ownership of the vehicle.

(2) The owner of a late model salvage motor vehicle to which this subsection applies may not transfer ownership of the vehicle by sale or otherwise unless the department has issued a salvage motor vehicle certificate of title or a nonrepairable motor vehicle certificate of title for the vehicle or a comparable ownership document has been issued by another state or jurisdiction for the vehicle.

(d)(1) A person that owns a late model salvage motor vehicle may not sell, transfer, or release the vehicle to a person other than a salvage vehicle dealer, the former owner of the vehicle, a governmental entity, an out-of-state buyer, a buyer in a casual sale at auction, or a person described by Subsection (g), Article 6687-2b, Revised Statutes, and shall deliver to that person a properly assigned certificate of title for the vehicle. If the assigned certificate of title is not a salvage motor vehicle certificate of title, a nonrepairable motor vehicle certificate of title, or a comparable ownership document issued by another state

or jurisdiction, the purchaser shall, not later than the 10th day after the date the purchaser receives the certificate of title from the owner:

(A) surrender the certificate of title to the department; and

(B) apply for a salvage motor vehicle certificate of title or a nonrepairable motor vehicle certificate of title for the vehicle, as appropriate.

(2) A salvage vehicle dealer that acquires ownership of a late model salvage motor vehicle or a nonrepairable motor vehicle for the purpose of dismantling, scrapping, or destroying the vehicle shall, before the 31st day after the date the dealer acquires the vehicle, submit to the department, on the form prescribed by the department, a report stating that the vehicle will be dismantled, scrapped, or destroyed, accompanied by a properly assigned regular certificate of title, salvage motor vehicle certificate of title, nonrepairable motor vehicle certificate of title, or a comparable ownership document issued by another state or jurisdiction for the vehicle.

(3) On receipt of the report and the certificate of title, the department shall issue the salvage vehicle dealer a receipt for the certificate of title, salvage motor vehicle certificate of title, nonrepairable motor vehicle certificate of title, or a comparable ownership document issued by another state or jurisdiction.

(e) A salvage vehicle dealer that acquires an older model vehicle for the purpose of dismantling, scrapping, or destroying the vehicle and that receives a properly assigned certificate of title for the vehicle shall, before the 31st day after the date the dealer acquires the vehicle:

(1) submit to the department, on the form prescribed by the department, a report stating that the vehicle will be dismantled, scrapped, or destroyed, accompanied by the properly assigned regular certificate of title, salvage motor vehicle certificate of title, nonrepairable motor vehicle certificate of title, or a comparable ownership document issued by another state or jurisdiction for the vehicle; and

(2) keep on the business premises of the dealer, until the third anniversary of the date the report on the vehicle is submitted to the department, a record of the vehicle.

(f) A person, other than a salvage vehicle dealer or an insurance company licensed to do business in this state, that acquires ownership of a late model salvage motor vehicle or a nonrepairable motor vehicle which has not been issued a salvage motor vehicle certificate of title, a nonrepairable motor vehicle certificate of title, or a comparable ownership document issued by another state or jurisdiction shall, before selling the vehicle, surrender the properly assigned certificate of title for the vehicle to the department and:

(1) if the vehicle is a vehicle described by Subsection (a)(6) but not by Subsection (a)(8) of this section, apply to the department for a salvage motor vehicle certificate of title for the vehicle; or

(2) if the vehicle is a vehicle described by Subsection (a)(8) of this section, apply to the department for a nonrepairable motor vehicle certificate of title for the vehicle.

(g) The owner of a late model salvage motor vehicle that has been issued a salvage motor vehicle certificate of title or a nonrepairable motor vehicle certificate of title may sell the vehicle only to a salvage vehicle dealer in this state, an out-of-state buyer, a buyer in a casual sale at auction, or a person described by Subsection (g), Article 6687-2b, Revised Statutes.

(h) An application for a salvage motor vehicle certificate of title or a nonrepairable motor vehicle certificate of title must:

(1) be made on a form prescribed by the department and accompanied by a fee established by the department, not to exceed an amount that is sufficient, when added to other fees collected under this Act, to recover the actual costs to the department of issuing the certificate; and

(2) include, in addition to any other information required by the department:

(A) the name and current address of the owner;

(B) a description of the vehicle, including the make, style of body, model year, and vehicle identification number;

(C) a description of the damage to the vehicle;

(D) the estimated cost of repairs to the vehicle, including parts and labor; and

(E) the predamaged actual cash value of the vehicle.

(i)(1) On receipt of a complete application and the prescribed application fee, the department shall, before the sixth business day after the date the department receives the application, issue the applicant a salvage motor vehicle certificate of title or a nonrepairable motor vehicle certificate of title, as appropriate.

(2) A nonrepairable motor vehicle certificate of title must state on its face that, except as provided by Subsections (n) and (p) of this section, the vehicle:

(A) may not be issued a regular certificate of title or registered in this state; and

(B) may only be used for parts or scrap metal.

(j) A person who holds a salvage motor vehicle certificate of title is entitled to possess the vehicle, record a lien on the vehicle, transport the vehicle, and transfer ownership of the vehicle. A vehicle for which a salvage motor vehicle certificate of title is the most current title may not be operated on a public highway.

(k)(1) A vehicle for which a salvage motor vehicle certificate of title has been issued may be issued a regular certificate of title only after application and, in addition to any other requirement of law, only if the application:

(A) describes each major component part used to repair the vehicle and shows the identification number required by federal law to be affixed to or inscribed on the part; and

(B) is accompanied by a written statement signed by a specially trained commissioned officer of the Department of Public Safety certifying to the department that:

(i) the vehicle identification numbers and parts identification numbers are accurate;

(ii) the applicant has proof that the applicant owns the parts used to repair the vehicle; and

(iii) the vehicle may be safely operated and complies with all applicable motor vehicle safety standards of this state.

(2) The Department of Public Safety may prescribe a fee, in an amount not to exceed the lesser of \$200 or the actual cost to that department,

for conducting an inspection and providing the written statement required by this subsection.

(l)(1) On receipt of a complete application under Subsection (k) of this section, accompanied by the peace officer's statement and the appropriate fee for the certificate of title, the department shall issue the applicant a certificate of title for the vehicle.

(2) A certificate of title issued under this subsection must:

(A) bear on its face the words "REBUILT SALVAGE"; and

(B) describe or disclose the vehicle's former condition in a manner understandable to a potential purchaser of the vehicle.

(m)(1) On proper application by the owner of a vehicle brought into this state from another state or jurisdiction that has on any certificate of title issued by the other state or jurisdiction a "rebuilt," "salvage," "nonrepairable," or analogous notation, the department shall issue the applicant a certificate of title or other appropriate document for the vehicle.

(2) A certificate of title or other appropriate document issued under this subsection must show on its face:

(A) the date of issuance;

(B) the name and address of the owner;

(C) any registration number assigned to the vehicle;

(D) a description of the vehicle as determined by the department; and

(E) any notation the department considers necessary or appropriate.

(n) A person who holds a nonrepairable motor vehicle certificate of title for a vehicle:

(1) is entitled to possess the vehicle, dismantle, scrap, or destroy the vehicle, transport the vehicle or parts of the vehicle, or rebuild the vehicle;

(2) may not operate or permit the operation of the vehicle on a public highway; and

(3) may transfer ownership of the vehicle only as permitted by law.

(o) Except as provided by Subsection (p) of this section, a person commits an offense if the person:

(1) applies to the department for a certificate of title for a motor vehicle; and

(2) knows that the vehicle is a nonrepairable motor vehicle that has been rebuilt.

(p)(1) A person who rebuilds a nonrepairable vehicle may apply to the department for a certificate of title for the vehicle if, in addition to any other requirement of law, the application:

(A) contains the information required by Subsection (k)(1)(A) of this section; and

(B) is accompanied by a written statement that complies with Subsection (k)(1)(B) of this section.

(2) The Department of Public Safety may prescribe a fee, in an amount not to exceed the lesser of \$200 or the actual cost to that department, for conducting an inspection and providing the written statement required by this subsection.

(3) On receipt of a complete application under this subsection, accompanied by the appropriate fee for the certificate of title, the department shall issue the applicant a certificate of title for the vehicle that conforms to Subsection (1)(2) of this section.

(q) For purposes of this section:

(1) the estimated cost of repair parts shall be determined by using a manual of repair costs or other instrument that is generally recognized and commonly used in the motor vehicle insurance industry to determine those costs or an estimate of the actual cost of the repair parts; and

(2) the estimated labor costs shall be computed by using the hourly rate and time allocations that are reasonable and commonly assessed in the repair industry in the community in which the repairs are performed.

(r) The department shall print salvage motor vehicle certificates of title and nonrepairable motor vehicle certificates of title in a color that distinguishes them from certificates of title and so that each document clearly shows that it is the ownership document for a late model salvage motor vehicle or a nonrepairable motor vehicle.

(s) A rebuilder must possess a certificate of title, a salvage motor vehicle certificate of title, a nonrepairable motor vehicle certificate of title, or a comparable ownership document issued by another state or jurisdiction for any motor vehicle that is:

(1) in the rebuilder's inventory; and

(2) being offered for resale.

(t) A person that rebuilds a late model salvage motor vehicle for which the department has issued a salvage motor vehicle certificate of title, or who assembles a late model salvage motor vehicle from component parts, may apply to the department for a certificate of title for the vehicle. A certificate of title issued by the department under this subsection must bear the words "REBUILT SALVAGE."

(u) Except as herein otherwise expressly provided, the provisions of this section shall be exclusively enforced by the department or any other governmental or law enforcement agency or its personnel. The department, or an agent, officer, or employee of the department, is not liable to a person damaged or injured by an act or omission relating to the issuance of a certificate of title, salvage motor vehicle certificate of title, or nonrepairable motor vehicle certificate of title under this section.

(v)(1) This section does not apply to, and does not preclude or prohibit any sales to, purchases by, or other transactions by or with, a person described by Subsection (g), Article 6687-2b, Revised Statutes, except as provided by Subdivision (2) or (3) of this subsection.

(2) A person described by Subsection (g), Article 6687-2b, Revised Statutes, shall submit to the department the certificate of title or equivalent document that the person receives in conjunction with the purchase of a motor vehicle not later than the 60th day after the date of receipt of the certificate of title or equivalent document.

(3) This section applies to a transaction with a person described by Subsection (g), Article 6687-2b, Revised Statutes, in which a motor vehicle is sold or delivered to the person for the purpose of reuse or resale as a motor vehicle or as motor vehicle parts if the motor vehicle is so used.

(w) An owner to whom Section 152.065, Tax Code, applies is prohibited from retaining for use or using a motor vehicle that has been issued a certificate of title under Subsection (l) of this section for a usual commercial purpose of that owner.

(x) This section does not:

(1) prohibit the owner of a late model salvage motor vehicle or a nonrepairable motor vehicle from selling the vehicle to any person, if the vehicle is so classified solely because of water damage caused by flood conditions; or

(2) limit the ability or authority of an insurance company to adjust or settle a claim for loss on a motor vehicle.

SECTION 2. Section 62, Certificate of Title Act (Article 6687-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 62. (a) Except as provided by Subsection (b) of this section, any ~~[Any]~~ person who shall violate any provisions of this Act shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than One Dollar (\$1) nor more than One Hundred Dollars (\$100) for the first offense, and may, upon any subsequent conviction for a violation of the same provision, within the discretion of the jury, be given double the amount of punishment provided for a first violation.

(b) A person who violates Section 37A of this Act or a rule adopted under Section 37A of this Act commits a Class A misdemeanor.

SECTION 3. Section 37, Certificate of Title Act (Article 6687-1, Vernon's Texas Civil Statutes), is repealed.

SECTION 4. This Act takes effect September 1, 1995, but only if H.B. No. 2599, 74th Legislature, Regular Session, 1995, is enacted and becomes law. If H.B. No. 2599, 74th Legislature, Regular Session, 1995, does not become law, this Act has no effect.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Senate Amendment No. 1

Amend **CSHB 2151** as follows:

Add Subsection (y) to SECTION 1 (Committee Printing page 7, line 4):

(y) A person required to register under Section 152.065, Tax Code may include in each customer agreement a separate charge for the proportionate amount of title fees, registration fees, and property taxes paid in the preceding calendar year on their vehicle fleet. If a person includes such charge, it must be done on a non-discrimintory basis and shall be collected in all agreements except those which are exempt from the taxes imposed in Section 152.026, Tax Code.

HB 2162 - WITH SENATE AMENDMENT

Representative Hightower called up with a senate amendment for consideration at this time,

HB 2162, A bill to be entitled An Act relating to the efficient administration of the criminal justice system.

On motion of Representative Hightower, the house concurred in the senate amendment to **HB 2162** by (Record 465): 139 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carona; Carter; Chisum; Clemons; Coleman; Combs; Conley; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davis; De La Garza; Dear; Delisi; Denny; Driver; Duncan; Dutton; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Gallego; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Maxey; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Ogden; Oliveira; Park; Patterson; Pickett; Pitts; Place; Price; Rabuck; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solis; Solomons; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Staples.

Absent — Davila; Dukes; Edwards; Marchant; Puente; Romo; Turner, S.; Uher; Zbranek.

HB 2162 - TEXT OF SENATE AMENDMENT

CSHB 2162, A bill to be entitled An Act relating to the efficient administration of the criminal justice system.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1

SECTION 1.001. Section 493.001, Government Code, is amended to read as follows:

Sec. 493.001. DEPARTMENT MISSION [RESPONSIBILITIES]. The mission of the department is to provide public safety, promote positive change in offender behavior, and reintegrate offenders into society [the state agency with primary responsibility for:

[~~(1) the confinement, supervision, and rehabilitation of felons;~~

[~~(2) the development of a system of state and local punishment, supervision, and rehabilitation programs and facilities; and~~

[~~(3) the reintegration of felons into society after release from confinement~~].

SECTION 1.002. (a) Section 493.003(b), Government Code, is amended to read as follows:

(b) The chief justice of the Supreme Court of Texas and the presiding judge of the Texas Court of Criminal Appeals shall each appoint six members to serve as the judicial advisory council to the community justice assistance

division and the board. The advisory council members serve staggered six-year terms, with the terms of four of the members expiring September [February] 1 of each odd-numbered year. In the event of a vacancy during a term, the appointing authority for the member who vacated the office shall appoint a replacement to fill the unexpired portion of the term. The advisory council shall advise the director of the community justice assistance division and the board on matters of interest to the judiciary, and the director and the board shall carefully consider the advice. Members of the advisory council are not entitled to compensation but are entitled to reimbursement for actual and necessary expenses in the conduct of their duties, as provided by the General Appropriations Act.

(b) Notwithstanding Section 2.03(b), Chapter 988, Acts of the 73rd Legislature, Regular Session, 1993, the terms of the initial appointees to the judicial advisory council to the community justice assistance division of the Texas Department of Criminal Justice and the Texas Board of Criminal Justice expire September 1, 1995, September 1, 1997, and September 1, 1999, respectively. On expiration of those terms, the term of a member is six years, as provided by Section 493.003, Government Code.

SECTION 1.003. Chapter 493, Government Code, is amended by adding Section 493.0081 to read as follows:

Sec. 493.0081. OFFICE OF INTERNAL AUDITS. (a) The board shall create within the department an office of internal audits. The board shall employ a chief of the office of internal audits based on recommendations from the executive director regarding qualified candidates for the position. The employment of the chief of the office of internal audits may be terminated only with the approval of the board.

(b) The office of internal audits shall:

- (1) conduct recurring financial and management audits;
- (2) conduct internal audits to evaluate department programs and the economy and efficiency of those programs; and
- (3) recommend improvements in management and programs on the basis of evaluations made under this subsection.

(c) The chief of the office of internal audits shall send reports, audits, evaluations, and recommendations to the executive director. The chief shall report directly to the board at least once a year on:

- (1) the activities of the office; and
- (2) the response of the department to recommendations made by the office.

(d) The chief shall report directly to the board on other matters at the times required by board policy.

SECTION 1.004. Sections 493.009(e) and (f), Government Code, are amended to read as follows:

(e) The department shall employ or contract with [~~through the Texas Commission on Alcohol and Drug Abuse with organizations to provide~~] qualified professionals to implement the program for persons required to participate in the program under Section 14, Article 42.12, Code of Criminal Procedure. For purposes of this subsection, a "qualified professional" is a person who:

(1) is a certified alcohol and drug abuse counselor;
(2) is a certified social worker or advanced clinical practitioner and who has at least two years of experience in chemical dependency counseling;
or

(3) is a licensed professional counselor, physician, or psychologist and who has at least two years of experience in chemical dependency counseling.

(f)(1) The department shall adopt rules of conduct for persons required to participate in the program under Section 14, Article 42.12, Code of Criminal Procedure, or required to participate in the program following modification of community supervision [~~probation~~] or parole.

(2) If the qualified professional with primary responsibility for treating a defendant and the individual in charge of security in the facility in which the defendant is housed jointly determine that the defendant is not complying with the rules or is medically or psychologically unsuitable for the program, they shall notify the department of that fact.

(3) The department, immediately on receiving notice, shall request the sentencing court to reassume custody of the defendant if the defendant was required to participate in the program under Section 14, Article 42.12, Code of Criminal Procedure, or required to participate in the program following modification of community supervision [~~probation~~]. The court shall reassume custody before the 12th day after the date on which the department notifies the court. If the court revokes the defendant's community supervision [~~probation~~], the admission of the defendant to the institutional division is an admission for which the department must account in the scheduled admissions policy [~~the county from which the defendant was sentenced is charged under the allocation formula~~] established under Section 499.071.

(4) The department, immediately on receiving notice, shall request the pardons and paroles division to reassume custody of the defendant if the defendant was required to participate in the program following modification of parole. The pardons and paroles division shall immediately take action in accordance with established policies and procedures of the Board of Pardons and Paroles to remove the defendant from the program. If a parole panel revokes the defendant's parole, the admission of the defendant to the institutional division is an admission for which the department must account in the scheduled admissions policy [~~the county from which the defendant was sentenced is charged under the allocation formula~~] established under Section 499.071.

(5) If the defendant was transferred to the facility from a county jail under Subsection (1), the department shall return the defendant to the county jail.

(6) A court's recommendation that a defendant be placed in a program created under this section does not give the court the power to hold the department or any officer or employee of the department in contempt of court for failure to adhere to that recommendation.

SECTION 1.005. Section 493.009, Government Code, is amended by amending Subsections (c), (g), and (h) and by adding Subsection (q) to read as follows:

(c) The program for persons required to participate in the program under

Section 14, Article 42.12, Code of Criminal Procedure, must consist of treatment programs that may vary in time from 90 days ~~[six months]~~ to 12 months. ~~[The department shall also establish and provide treatment programs for persons in categories described by Subsections (g)(1)-(3) who are housed in beds otherwise provided for persons required to participate in the program under Section 14, Article 42.12, Code of Criminal Procedure.]~~

(g) The department shall provide at least 5,200 ~~[12,000]~~ beds for the purpose of operating the program for persons required to participate in the program under Section 14, Article 42.12, Code of Criminal Procedure, as amended by Chapter 900, Acts of the 73rd Legislature, Regular Session, 1993, except that the beds may also be used to house the following categories of persons:

(1) persons transferred under Subchapter A, Chapter 499, Government Code, and Section 8(i), Article 42.18, Code of Criminal Procedure;

(2) persons whose community supervision ~~[probation]~~ or parole has been modified; ~~[and]~~

(3) defendants confined in county jails awaiting transfer to the institutional division; and

(4) inmates participating in the program described by Section 501.0931.

(h) On and after the date persons are required under Section 14, Article 42.12, Code of Criminal Procedure, to participate in the program established under this section, the department shall give priority to housing those persons over the categories of persons described by Subsections (g)(1)-(4)~~[(3)]~~.

(q) The department not less often than every two years shall determine whether the department should increase the number of beds provided by the department for the operation of the program for persons required to participate in the program under Section 14, Article 42.12, Code of Criminal Procedure, as amended by Chapter 900, Acts of the 73rd Legislature, Regular Session, 1993.

SECTION 1.006. Sections 493.009(m) and (n), Government Code, are amended to read as follows:

(m) Notwithstanding any other provision of this section, the department is authorized to provide substance abuse felony punishment facilities, not to exceed 500 beds, for newly provided alcohol and drug abuse beds exclusively for persons whose community supervision ~~[probation]~~ or parole has been modified.

(n) Except as otherwise provided by this subsection, the ~~[The]~~ department shall separate participants in the program created under this section from inmates of the institutional division, except at times determined necessary by the department for the purpose of transportation or staging or for medical or security reasons. The department may commingle participants in the program created under this section with inmates in the program described by Section 501.0931.

SECTION 1.007. Section 493.010, Government Code, is amended to read as follows:

Sec. 493.010. CONTRACTS FOR MISCELLANEOUS HOUSING. The board, for the temporary or permanent housing of inmates, may enter into leases or contract with:

(1) public or private jails [~~subject to the restrictions of Subchapter A, Chapter 495~~]; or

(2) operators of alternative housing facilities.

SECTION 1.008. Section 493.011, Government Code, is amended to read as follows:

Sec. 493.011. **CONSULTANT CONTRACTS FOR PRISON CONSTRUCTION.** The board may not contract for construction-related consulting services to the board with an individual or firm if that individual or firm is also under contract with the department [~~institutional division~~] to provide construction management services for prison unit construction.

SECTION 1.009. Chapter 493, Government Code, is amended by adding Section 493.015 to read as follows:

Sec. 493.015. ENFORCEMENT OFFICERS. The executive director may appoint employees who are certified by the Commission on Law Enforcement Officer Standards and Education as qualified to be peace officers to serve under the direction of the executive director and assist the executive director in performing the enforcement duties of the department.

SECTION 1.010. Chapter 493, Government Code, is amended by adding Section 493.016 to read as follows:

Sec. 493.016. INFORMATION OF PUBLIC INTEREST; COMPLAINTS. (a) The department shall prepare information of public interest describing the functions of the department and the procedures by which complaints are filed with and resolved by the department. The department shall make the information available to the general public and appropriate state agencies.

(b) The department shall establish methods by which interested persons are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department.

(c) The department shall keep an information file about each complaint filed with the department by a member of the general public that relates to the operations of the department.

(d) If a written complaint is filed with the department by a member of the general public that relates to the operations of the department, the department, at least as frequently as quarterly and until final disposition of the complaint, shall notify the complainant of the status of the complaint unless the notice would jeopardize an undercover investigation.

SECTION 1.011. Chapter 493, Government Code, is amended by adding Section 493.017 to read as follows:

Sec. 493.017. SEAL OF DEPARTMENT. (a) The department shall use an official seal to certify documents received by the department under Sections 8(a) and (c), Article 42.09, Code of Criminal Procedure.

(b) The official seal must contain an engraved, five-pointed star in the center with the words "Texas Department of Criminal Justice" around the margin.

SECTION 1.012. Section 494.001, Government Code, is amended to read as follows:

Sec. 494.001. INSTITUTIONAL DIVISION MISSION. The mission of the institutional division is to provide safe and appropriate confinement, supervision, rehabilitation, and reintegration of adult felons, and to effectively

manage or administer correctional facilities based on constitutional and statutory standards ~~[STATEMENT OF POLICY. It is the policy of this state to manage the institutional division:~~

~~[(1) in a manner consistent with the operation of a modern prison system;~~

~~[(2) in a manner that provides persons convicted of violating the law and sentenced to the division with humane treatment and with the opportunity, encouragement, and training necessary for reformation; and~~

~~[(3) with the intention of making the division self-sustaining].~~

SECTION 1.013. Section 494.002(a), Government Code, is amended to read as follows:

(a) The director of the institutional division may adopt policies ~~[rules]~~ governing the humane treatment, training, education, rehabilitation, and discipline of inmates and may arrange for the separation and classification of inmates according to the inmates' sex, age, health, corrigibility, and type of offense for which the inmate was sentenced to the institutional division.

SECTION 1.014. Sections 494.003(a) and (b), Government Code, are amended to read as follows:

(a) The department ~~[director of the institutional division]~~ shall keep a correct and accurate account of each financial transaction involving the institutional division, including the receipt and disbursement of money by the division. The department ~~[director]~~ shall keep an account of each institutional division unit, industry, and farm, and for each person doing business with the division.

(b) The director of the institutional division or a designee of the director shall provide a receipt for all money received by the institutional division.

SECTION 1.015. Section 494.012(a), Government Code, is amended to read as follows:

(a) The ~~[director of the]~~ institutional division shall evaluate the efficiency of the maintenance staff of each unit of the division.

SECTION 1.016. Section 496.001, Government Code, is amended to read as follows:

Sec. 496.001. ACQUISITION OF REAL PROPERTY. The board may acquire real property through purchase, subject to specific appropriative authority in the General Appropriations Act, or through the acceptance of a gift, grant, or donation for a facility ~~[prison site]~~.

SECTION 1.017. Section 496.002(a), Government Code, is amended to read as follows:

(a) The board has eminent domain authority to condemn and acquire land if necessary to eliminate security hazards, protect the life and property of citizens of this state, or improve the efficiency, management, or operations of the department ~~[institutional division]~~.

SECTION 1.018. Subchapter A, Chapter 496, Government Code, is amended by adding Section 496.0021 to read as follows:

Sec. 496.0021. SALE OF DEPARTMENT REAL PROPERTY. (a) The board may sell state-owned real property under the board's management and control at the real property's fair market value. The General Land Office shall negotiate and close a transaction under this section on behalf of the board using

procedures under Section 31.158(c), Natural Resources Code. Proceeds from the transaction shall be deposited in the Texas capital trust fund.

(b) The board may authorize the sale of land directly to a local government at fair market value without the requirement of a sealed bid sale if the local government acquires the property for use as a local correctional facility.

SECTION 1.019. Section 496.003, Government Code, is amended to read as follows:

Sec. 496.003. LEASE OF ~~[INSTITUTIONAL DIVISION]~~ REAL PROPERTY. (a) The board may lease state-owned real property under the board's management and control at the real property's fair market lease value. The initial period of a lease under this section may not exceed 20 years. The lease may contain terms and conditions determined by the board to be in the best interest of the department ~~[institutional division]~~. Neither a member of the board nor a person related to a member within the second degree by affinity or within the third degree by consanguinity, as determined under Subchapter B, Chapter 573 ~~[Article 5996h, Revised Statutes]~~, may own an interest in an entity leasing real property under this section.

(b) The department ~~[institutional division]~~ shall deposit in the general revenue ~~[special mineral]~~ fund to the credit of a special account ~~[created by Section 34.017, Natural Resources Code;]~~ the proceeds of a lease entered into under this section, after deducting expenses. The proceeds may be used only for the payment of operating expenses of the department ~~[are for the exclusive use of the institutional division, as specified by legislative appropriation]~~. Sections 403.094 and 403.095 do not apply to the dedication of lease proceeds under this subsection.

(c) The department ~~[board]~~ shall notify taxing units authorized to impose property taxes on land leased under this section that the land has been leased. The department ~~[board]~~ shall send a copy of the lease by first class mail, return receipt requested, to each taxing unit in which the land is located. The lessee is liable for property taxes imposed on land leased under this section.

SECTION 1.020. Subchapter A, Chapter 496, Government Code, is amended by adding Section 496.0031 to read as follows:

Sec. 496.0031. TRANSFER OF FACILITIES. (a) The department may transfer a correctional facility to another agency of the state, and the agency receiving the facility subsequently may transfer the facility back to the department.

(b) A transfer under this section requires the agreement of the board and the governing body of the agency receiving the correctional facility or returning the correctional facility to the department, both as to the identity of the facility to be transferred and to the method of transfer.

(c) In this section, "transfer" means to convey title to, lease, or otherwise convey the beneficial use of a correctional facility and land appurtenant to the facility.

SECTION 1.021. Section 496.004, Government Code, is amended to read as follows:

Sec. 496.004. EASEMENTS. (a) The board~~[, with the consent of the attorney general and governor;]~~ may grant or lease permanent or temporary right-of-way easements on department land for:

- (1) public highways, roads and streets, and ditches;
- (2) electric lines and pipelines, including necessary wires, pipes, poles, and other equipment used to transmit, convey, or distribute water, electricity, gas, oil, or similar substances or commodities;
- (3) electrical substations; or
- (4) the provision of utilities for the operation of facilities of the department and roadways for access to facilities of the department.

(b) The board may not grant or lease an easement unless the board receives fair and adequate consideration. However, the board may without consideration grant a state highway easement to the State Department of Highways and Public Transportation, a roadway easement to a county for connecting roads between state highways, easements to utility providers for utilities to serve facilities of the department, and roadway easements to a city or a county to provide roadways for facilities of the department.

(c) A grant or lease must contain a full reservation of minerals in and under the land. The board~~[, with the consent of the attorney general and governor;]~~ may impose other fair and reasonable conditions, covenants, and provisions.

(d) The department ~~[board]~~ shall deposit money received from a grant or lease of easements and money received from damages to department land in the general revenue fund to the credit of a special account ~~[special mineral fund created by Section 34.017, Natural Resources Code]~~. Money received under this section may be used only for the payment of operating expenses of the department. Sections 403.094 and 403.095 do not apply to the dedication of money under this section.

SECTION 1.022. Section 496.005, Government Code, is amended to read as follows:

Sec. 496.005. TAX EXEMPTION. (a) Property associated with a facility described by Subsection (b) is exempt from taxation during the time the property is used exclusively for the purposes of the department ~~[institutional division]~~.

(b) This section applies to:

(1) land in Anderson County owned by the state for the use and benefit of the institutional division that is subject to a lease granted by the board and a sublease entered into by the division and the ~~[State Purchasing and]~~ General Services Commission, on which is located the correctional facility known as the Mark W. Michael Unit of the Coffield Prison Farm; and

(2) a parcel of land in Anderson, Brazoria, Coryell, Houston, Madison, or Walker County owned by the state for the use and benefit of the institutional division that is subject to a lease granted by the board and a sublease entered into by the division and the ~~[State Purchasing and]~~ General Services Commission, on which is located a trusty camp facility.

SECTION 1.023. Section 496.006, Government Code, is amended to read as follows:

Sec. 496.006. ROAD MAINTENANCE. (a) The department ~~[board]~~ and the Texas Department of ~~[State Highway and Public]~~ Transportation ~~[Commission]~~ may enter into and perform an agreement or contract for the maintenance of a road in or adjacent to a facility ~~[unit]~~ of the department ~~[institutional division]~~.

(b) An agreement or contract entered into under this section and payments made under the agreement or contract must conform with the provisions of Chapter 771 [The Interagency Cooperation Act (Article 4413(32), Vernon's Texas Civil Statutes)].

SECTION 1.024. Section 496.007, Government Code, is amended to read as follows:

Sec. 496.007. LOCATION OF NEW FACILITIES ~~[UNITS]~~. ~~[(a)]~~ In determining the location of a facility ~~[unit]~~ to be built, the department ~~[institutional division]~~, in evaluating the advantages and disadvantages of the proposed location, shall consider whether the proposed location is:

(1) close enough to a county with 100,000 or more inhabitants to provide ~~[enable the division and inmates to have]~~ access to services and other resources provided in such a county;

(2) cost-effective with respect to its proximity to other facilities of ~~[units in]~~ the department ~~[division]~~;

(3) close to an area that would facilitate release of inmates or persons confined in state jail felony facilities to their area of residence; and

(4) close to an area that provides adequate educational opportunities and medical care.

~~[(b) The Criminal Justice Coordinating Council at least once a year shall provide the institutional division with a list, according to the best information available to the council, of counties in this state with 100,000 or more inhabitants.]~~

SECTION 1.025. Sections 496.051(a) and (b), Government Code, are amended to read as follows:

(a) The department ~~[institutional division]~~ shall comply with any special purchasing procedures requiring competitive review under the State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes).

(b) The board may authorize the executive director to adopt policies ~~[rules]~~ allowing the institutional division to purchase directly or at public auction livestock, agricultural commodities, agricultural or industrial equipment, supplies, and raw materials for agricultural or industrial production, breeding, consumption, or resale, if the division determines that the purchase is economically feasible and advantageous to the division. The State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes) does not apply to purchases made under this subsection. The institutional division shall notify the ~~[State Purchasing and]~~ General Services Commission as soon as practicable of a purchase made under this subsection and the purchase price.

SECTION 1.026. Section 496.0515, Government Code, is amended to read as follows:

Sec. 496.0515. HAZARDOUS WASTE MANAGEMENT CONTRACTS.

(a) The competitive bidding contract procedures established by Article 3, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), do not apply to a contract awarded by the department ~~[institutional division]~~ for:

(1) testing a solid waste or other substance to determine whether the waste or other substance is a hazardous waste; or

(2) the transport, storage, treatment, or disposal of a hazardous waste.

(b) The department [~~institutional division~~] shall promulgate procedures for the purpose of purchasing under Subsection (a). The department [~~division~~] shall file copies of the procedures promulgated under this subsection with the [~~State Purchasing and~~] General Services Commission.

SECTION 1.027. Section 496.052(a), Government Code, is amended to read as follows:

(a) The board may purchase insurance to protect the department [~~institutional division~~] from loss due to the damage, loss, theft, or destruction of department [~~division~~] aircraft.

SECTION 1.028. Section 496.101(a), Government Code, is amended to read as follows:

(a) As funds are appropriated for that purpose, the department shall establish for each facility [~~unit~~] of the department [~~institutional division~~] an automated inventory and maintenance system that interacts with the centralized computer system of the department.

SECTION 1.029. Section 497.001, Government Code, is amended to read as follows:

Sec. 497.001. PRISON INDUSTRIES OFFICE. The prison industries office is an office in the department [~~institutional division~~]. ~~The office is under the control of the director of the institutional division.~~

SECTION 1.030. Section 497.002(b), Government Code, is amended to read as follows:

(b) To implement the purposes of the office, the department [~~director of the institutional division~~] may establish and operate a prison industries program at each correctional facility that the department [~~director~~] considers suitable for such a program.

SECTION 1.031. Section 497.004, Government Code, is amended to read as follows:

Sec. 497.004. INMATE LABOR, PAY. (a) The department [~~director of the institutional division~~] shall use inmate labor in the prison industries program to the greatest extent feasible and shall develop and expand the prison industries program by pursuing arrangements with business for the use of inmate labor.

(b) The board may develop and administer an incentive pay scale for inmates [~~confined in the institutional division~~] who participate in the prison industries program. The program may be financed through contributions donated for this purpose by private businesses contracting with the department [~~institutional division~~]. The department [~~institutional division~~] shall apportion pay earned by an inmate under this subchapter to the following persons and entities, in amounts determined at the discretion of the department [~~division~~]:

(1) persons to whom the inmate has been ordered by a court to pay restitution;

(2) the inmate's family and dependents;

(3) the state, as reimbursement for the cost of the inmate's confinement;

(4) the compensation to victims of crime fund, created by Article 56.54, Code of Criminal Procedure [~~Section 14, Crime Victims Compensation Act (Article 8309-1, Vernon's Texas Civil Statutes)~~]; and

(5) the inmate's trust fund.

SECTION 1.032. Section 497.005, Government Code, is amended to read as follows:

Sec. 497.005. PROCEEDS FROM PRISON INDUSTRIES. Proceeds received from the operation of a prison industries program shall be deposited in the industrial revolving fund. The proceeds may be used by the department ~~[institutional division]~~ for the administration of this subchapter.

SECTION 1.033. Section 497.006, Government Code, is amended to read as follows:

Sec. 497.006. CONTRACTS. To encourage the development and expansion of the prison industries program, the prison industries office may enter into necessary contracts related to the prison industries program. With the approval of the board, the office may enter into a contract with a private business to conduct a program on or off property operated by the department ~~[institutional division]~~.

SECTION 1.034. Section 497.008, Government Code, is amended to read as follows:

Sec. 497.008. LEASE OF LAND. To further the expansion and development of the prison industries program, the department ~~[institutional division]~~ may lease prison land to a private business. A lease under this section may not exceed a term of 50 years. The business must lease the land at fair market value and may construct or convert plant facilities on the land.

SECTION 1.035. Section 497.009, Government Code, is amended to read as follows:

Sec. 497.009. CERTIFICATION FOR FRANCHISE TAX CREDIT. The department ~~[institutional division]~~ or the prison industries office on behalf of the department ~~[institutional division]~~ shall prepare and issue a certification that a corporation requires to establish eligibility for the franchise tax credit for wages paid to inmates or employees who were inmates under Subchapter L, Chapter 171, Tax Code.

SECTION 1.036. Section 497.010, Government Code, is amended to read as follows:

Sec. 497.010. COMPLIANCE. The prison industries office may enter into a contract with a private business under Section 497.006 only if the contract specifies that the prison industries office and the private business will comply with the Private Sector/Prison Industry Enhancement Certification Program operated by the Bureau of Justice Assistance and authorized by 18 U.S.C. Section 1761 ~~[42 U.S.C. Section 3701 et seq.]~~.

SECTION 1.037. Section 497.034(c), Government Code, is amended to read as follows:

(c) The institutional division may use surplus agricultural lands to provide agricultural products to a nonprofit organization at no profit to the division ~~[Article 9, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), applies to property described by Subsection (a)].~~

SECTION 1.038. Section 497.035(a), Government Code, is amended to read as follows:

(a) A person commits an offense if the person intentionally sells or offers to sell on the open market in this state an article or product the person knows was manufactured in whole or in part by an inmate of the institutional division

or an inmate in a correctional facility in any other state, other than an inmate;

(1) who was on community supervision, [~~probation or~~] parole, or mandatory supervision;

(2) [~~or~~] employed by an enterprise who has employed the inmate to advantage themselves of the Franchise Tax Credit offered under Subchapter L, Chapter 171, Tax Code, at the time of manufacture; or

(3) participating in a federally certified prison industry enhancement program.

SECTION 1.039. Section 497.081(a), Government Code, is amended to read as follows:

(a) For the purposes of this subchapter, only the institutional division may appoint an inmate to serve as a trustee, under policies [~~rules~~] adopted by the director of the institutional division.

SECTION 1.040. Subchapter D, Chapter 497, Government Code, is amended by adding Section 497.090 to read as follows:

Sec. 497.090. WORK REQUIRED. The department shall require each inmate to work, to the extent that the inmate is physically capable of working.

SECTION 1.041. Section 497.091, Government Code, is amended to read as follows:

Sec. 497.091. CONTRACTS FOR INMATE LABOR. (a) In this section:

(1) "Agency" has the meaning assigned that term by Section 771.002 [~~2, The Interagency Cooperation Act (Article 4413(32), Vernon's Texas Civil Statutes)~~].

(2) "Local government" has the meaning assigned that term by Section 791.003 [~~3, The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes)~~].

(b) The department [~~institutional division~~] shall seek contracts with agencies and local governments to provide inmate labor to those agencies and governments.

(c) The department [~~institutional division~~] may not enter into a contract with an agency under this section unless the contract complies with Chapter 771 [~~The Interagency Cooperation Act (Article 4413(32), Vernon's Texas Civil Statutes)~~] and may not enter into a contract with a local government under this section unless the contract complies with Chapter 791 [~~The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes)~~]. A contract entered into under this section may provide that the department [~~institutional division~~] be reimbursed for expenses incurred by the division in providing inmate labor to the agency or local government.

SECTION 1.042. Section 497.092(b), Government Code, is amended to read as follows:

(b) An agreement or contract entered into under this section and payments made under the agreement or contract must conform with Chapter 771 [~~The Interagency Cooperation Act (Article 4413(32), Vernon's Texas Civil Statutes)~~].

SECTION 1.043. Section 497.094, Government Code, is amended to read as follows:

Sec. 497.094. JOB TRAINING PROGRAMS. The department [~~institutional division and the pardons and paroles division by rule~~] shall [~~adopt a memorandum of understanding that establishes the respective responsibility~~]

~~of the institutional division to~~ implement job training programs for inmates confined in facilities operated by the department and ~~[of the pardons and paroles division to]~~ monitor the success of those programs. The department shall collect ~~[memorandum must establish a method by which the pardons and paroles division provides the institutional division with]~~ information relating to the employment histories of inmates released from the institutional division on parole and mandatory supervision. ~~[The institutional division shall coordinate the development of the memorandum of understanding.]~~

SECTION 1.044. Section 497.096, Government Code, is amended to read as follows:

Sec. 497.096. LIABILITY PROTECTIONS. An employee of the Texas Department of Criminal Justice, sheriff, employee of a sheriff's department, county commissioner, county employee, county judge, employee of a community corrections and supervision department, restitution center, or officer or employee of a political subdivision other than a county is not liable for damages arising from an act or failure to act in connection with community service performed by an inmate imprisoned in a facility operated by the department ~~[pursuant to court order]~~ or in connection with an inmate or offender programmatic or nonprogrammatic activity, including work, community service, educational, and treatment activities, if the act or failure to act was not intentional, wilfully or wantonly negligent, or performed with conscious indifference or reckless disregard for the safety of others.

SECTION 1.045. Subchapter E, Chapter 497, Government Code, is amended by adding Section 497.097 to read as follows:

Sec. 497.097. USE OF STATE JAIL FELONS. The department may use the labor of defendants confined in a state jail felony facility in any work or community service program or project performed by the institutional division.

SECTION 1.046. Section 498.001(1), Government Code, is amended to read as follows:

(1) "Inmate" means a person imprisoned ~~[confined]~~ by order of a court ~~[in the institutional division]~~, whether the person is actually imprisoned ~~[confined]~~ in a facility operated by or under contract with the institutional division ~~[the institution]~~ or is under the supervision or custody of the pardons and paroles division.

SECTION 1.047. Section 498.002, Government Code, is amended to read as follows:

Sec. 498.002. CLASSIFICATION AND RECLASSIFICATION. The department ~~[institutional division]~~ shall classify each inmate as soon as practicable on the inmate's arrival at the institutional division or a transfer facility and, subject to the requirements of Section 498.005, shall reclassify the inmate as circumstances warrant. Each inmate must be classified according to the inmate's conduct, obedience, industry, and criminal history. The department ~~[director of the institutional division]~~ shall maintain a record on each inmate showing each classification and reclassification of the inmate with the date and reason for each classification or reclassification. The department ~~[institutional division]~~ may classify each inmate on the inmate's arrival at the institutional division or a transfer facility in a time-earning category that does not allow the inmate to earn more than 30 days' good conduct time for each 30 days actually served.

SECTION 1.048. Section 498.003, Government Code, is amended to read as follows:

Sec. 498.003. ACCRUAL OF GOOD CONDUCT TIME. (a) Good conduct time applies only to eligibility for parole or mandatory supervision as provided by Section 8, Article 42.18, Code of Criminal Procedure, and does not otherwise affect an inmate's term. Good conduct time is a privilege and not a right. Regardless of the classification of an inmate, the department [~~director of the institutional division~~] may grant good conduct time to the inmate only if the department [~~director~~] finds that the inmate is actively engaged in an agricultural, vocational, or educational endeavor or in an industrial program or other work program, unless the department [~~director~~] finds that the inmate is not capable of participating in such an endeavor.

(b) An inmate accrues good conduct time according to the inmate's classification in amounts as follows:

(1) 20 days for each 30 days actually served while the inmate is classified as a trusty, except that the department [~~director of the institutional division~~] may award the inmate not more than 10 extra days for each 30 days actually served;

(2) 20 days for each 30 days actually served while the inmate is classified as a Class I inmate; and

(3) 10 days for each 30 days actually served while the inmate is classified as a Class II inmate.

(c) An inmate may not accrue good conduct time during any period the inmate is classified as a Class III inmate or is on parole or under mandatory supervision.

(d) An inmate may accrue good conduct time, in an amount determined by the department [~~director of the institutional division~~] that does not exceed 15 days for each 30 days actually served, for diligent participation in an industrial program or other work program or for participation in an agricultural, educational, or vocational program provided to inmates by the department [~~institutional division~~]. For the purposes of this subsection, the term "participation in an educational program" includes the participation of the inmate as a tutor or a pupil in a literacy program authorized by Section 501.005. The department [~~institutional division~~] may not award good conduct time under this subsection for participation in a literacy program unless the department [~~division~~] determines that the inmate participated in good faith and with diligence as a tutor or pupil.

(e) If a person is confined in a county jail [~~or a transfer facility operated by the institutional division is transferred to any other facility of the institutional division for confinement purposes~~], the department [~~director of the institutional division~~] shall award good conduct time to the person up to an amount equal to the amount earned by an inmate in the entry level time earning class [~~that which the person could have accrued during the period of confinement in the county jail or transfer facility if instead the person had been imprisoned in the division during that period~~]. The department [~~director of the institutional division~~] shall award good conduct time to a defendant for diligent participation in a voluntary work program operated by a sheriff under Article 43.101, Code of Criminal Procedure, in the same manner as if the inmate had diligently

participated in an industrial program or other work program provided to inmates by the department ~~[institutional division]~~. The sheriff of each county shall have attached a certification of the number of days each inmate diligently participated in the volunteer work program operated by the sheriff under Article 43.101, Code of Criminal Procedure.

SECTION 1.049. Section 498.004, Government Code, is amended to read as follows:

Sec. 498.004. FORFEITURE AND RESTORATION OF GOOD CONDUCT TIME. (a) If, during the actual term of imprisonment of an inmate in the institutional division or in a transfer facility, the inmate commits an offense or violates a rule of the division, the department ~~[director of the institutional division]~~ may forfeit all or any part of the inmate's accrued good conduct time. The department ~~[director of the institutional division]~~ may restore good conduct time forfeited under this subsection subject to policies established ~~[rules adopted]~~ by the institutional division.

(b) On the revocation of parole or mandatory supervision of an inmate, the inmate forfeits all good conduct time previously accrued. On return to the institutional division the inmate may accrue new good conduct time for subsequent time served in the division. The department ~~[director of the institutional division]~~ may restore good conduct time forfeited on a revocation that does not involve a new criminal conviction after the inmate has served at least three months of good behavior in the institutional division, subject to policies established ~~[rules adopted]~~ by the division. ~~[Not later than the 60th day after the date an inmate is returned to the institutional division following a revocation of parole or mandatory supervision, the pardons and paroles division shall notify the director of the institutional division of the grounds for revocation:]~~

SECTION 1.050. Section 498.005, Government Code, is amended to read as follows:

Sec. 498.005. ANNUAL REVIEW OF CLASSIFICATION; RESTORATION OF GOOD TIME; RETROACTIVE AWARD OF GOOD TIME. At least annually, the board shall review the institutional division's policies ~~[rules]~~ relating to restoration of good conduct time that has been forfeited, the manner in which inmates are classified and reclassified, and the manner in which additional good conduct time is awarded retroactively to inmates who have been reclassified. ~~[The board shall consider in its review whether the inmate overcrowding in the institutional division has decreased and whether it is necessary for purposes of decreasing overcrowding to classify inmates according to Section 498.002 to restore good conduct time under Section 498.004, or to award additional good conduct time retroactively to inmates who have been reclassified. If the board determines that overcrowding has decreased and it is not necessary to restore good conduct time or award additional good conduct time, it shall direct the institutional division to discontinue those practices.]~~

SECTION 1.051. Sections 499.001(1) and (3), Government Code, are amended to read as follows:

(1) "Community residential facility" means a facility ~~[halfway house certified by and]~~ under contract with the department ~~[pardons and paroles]~~

~~division~~] under Section 8(i), Article 42.18, Code of Criminal Procedure, or another facility or residence approved by the department ~~[pardons and paroles division]~~.

(3) "Pre-parolee" means an eligible inmate of whom the pardons and paroles division has assumed custody.

SECTION 1.052. Sections 499.002(a) and (b), Government Code, are amended to read as follows:

(a) The pardons and paroles division may assume custody of an eligible inmate not more than one year ~~[180 days]~~ before the inmate's presumptive parole date or mandatory supervision release date. The eligible inmate becomes a pre-parolee on the date the pardons and paroles division assumes custody, and the pardons and paroles division immediately shall transfer the pre-parolee to a community residential facility. Except as otherwise provided by this subchapter, the pre-parolee may serve the remainder of the pre-parolee's sentence before release on parole in the facility designated by the pardons and paroles division.

(b) At the time of the transfer of the pre-parolee, the pardons and paroles division shall designate a community residential facility as the pre-parolee's assigned unit of confinement.

SECTION 1.053. Section 499.0021, Government Code, is amended to read as follows:

Sec. 499.0021. TRANSFER OF REVOKED DEFENDANTS ~~[PROBATIONERS]~~. (a) An inmate is eligible for transfer under this section if the inmate is confined in the institutional division or a county jail following revocation of community supervision ~~[probation]~~ on grounds other than the commission of a subsequent felony offense.

(b) The pardons and paroles division may assume custody of an inmate who is eligible for transfer under this section not earlier than one year before the inmate's presumptive parole date. The inmate becomes a pre-parolee on the date the pardons and paroles division assumes custody, and the pardons and paroles division immediately shall transfer the pre-parolee to a facility under contract with the department ~~[division]~~, which may be a community residential facility, a community corrections facility listed in Section 1(b), Article 42.13, Code of Criminal Procedure, or a county correctional facility. A pre-parolee transferred under this section is considered to be in the actual physical custody of the pardons and paroles division.

(c) A pre-parolee transferred by the pardons and paroles division to a facility under this section is subject to the provisions of Sections 499.002(c), 499.004, and 499.005 in the same manner as if the person were a pre-parolee who had been transferred to a community residential facility under Section 499.002.

SECTION 1.054. Section 499.003, Government Code, is amended to read as follows:

Sec. 499.003. TRANSFER FROM JAIL OR OTHER CORRECTIONAL FACILITY. (a) A person is eligible for transfer under this section from a jail or correctional institution to a secure community residential facility if:

(1) the person has been sentenced to a term of confinement in the institutional division;

(2) the person has not been delivered to the custody of the institutional division, but rather is confined in a jail in this state, a federal correctional institution, or a jail or correctional institution in another state; and

(3) a presumptive parole date or mandatory supervision release date for the person has been established.

(b) The pardons and paroles division may authorize the transfer of an eligible person from a jail in this state, a federal correctional institution, or a jail or correctional institution in another state to a secure community residential facility designated by the pardons and paroles division not more than one year [~~180 days~~] before the person's presumptive parole date or mandatory supervision release date. A person transferred under this section is considered to be in the actual physical custody of the pardons and paroles division.

(c) A person transferred by the pardons and paroles division to a secure community residential facility is subject to the provisions of Sections 499.002(c), 499.004, and 499.005 in the same manner as if the person is a pre-parolee who had been transferred to a community residential facility under Section 499.002.

(d) The pardons and paroles division may request of a sheriff that the sheriff forward to the pardons and paroles division copies of any records possessed by the sheriff that are relevant to the pardons and paroles division in its determination as to whether to transfer a person from the county jail to a secure community residential facility, and the pardons and paroles division shall request the sheriff to forward to the institutional division and to the pardons and paroles division the information relating to the defendant the sheriff would be required under Section 8, Article 42.09, Code of Criminal Procedure, to deliver to the department [~~institutional division~~] had the defendant been transferred to the institutional division. The pardons and paroles division shall determine whether the information forwarded by the sheriff contains a thumbprint taken from the person in the manner provided by Article 38.33, Code of Criminal Procedure, and, if not, the pardons and paroles division shall obtain a thumbprint in the manner provided by that article, and shall forward the thumbprint to the institutional division for inclusion with the information sent by the sheriff. The sheriff shall comply with a request from the pardons and paroles division made under this subsection.

SECTION 1.055. Section 499.004, Government Code, is amended to read as follows:

Sec. 499.004. RULES; SUPERVISION OF PRE-PAROLEES. (a) The department [~~Board of Pardons and Paroles~~] shall establish policies [~~adopt rules~~] for the conduct of pre-parolees transferred under this subchapter.

(b) On transfer, the pre-parolee is subject to supervision by the pardons and paroles division and shall obey the orders of the Board of Pardons and Paroles and the pardons and paroles division.

(c) A facility director or designee of a facility director [~~An officer assigned by the pardons and paroles division to supervise a pre-parolee transferred under this subchapter must make periodic written reports to the pardons and paroles division concerning the pre-parolee's adjustment. The officer~~] shall immediately report to the pardons and paroles division in writing if the director or designee [~~officer~~] believes that a [~~the~~] pre-parolee has violated the terms of the pre-

parolee's transfer agreement or the rules of the facility [~~and may include in the report the officer's recommendation as to the disciplinary action the pardons and paroles division should take in the case. The officer may also recommend to a parole panel that it rescind or revise the pre-parolee's presumptive parole date~~]. The pardons and paroles division may require an agent of the pardons and paroles division or the community residential facility to conduct a hearing.

(d) If the pardons and paroles division has an administrative need to deliver the pre-parolee to the custody of the institutional division or if after a disciplinary hearing the pardons and paroles division concurs that a violation has occurred, the pardons and paroles division [~~with the approval of the institutional division~~] may deliver the pre-parolee to the actual custody of the institutional division and the institutional division may assign the pre-parolee to a regular unit of the institutional division. [~~If the officer reporting a violation recommends a disciplinary action, the pardons and paroles division shall follow the recommendation unless it determines that another disciplinary action is more appropriate.~~] If the pardons and paroles division [~~officer~~] recommends rescission or revision of the pre-parolee's presumptive parole date, a parole panel shall rescind or revise the date unless it determines the action is inappropriate.

(e) Before [~~During the period after~~] a pre-parolee is transferred to a community residential facility under this section [~~article~~] and before the pre-parolee is released on parole, the department [~~pardons and paroles division~~] may award good conduct time to the pre-parolee [~~earned by the pre-parolee during that period~~] in the same amounts and in the same manner as the department [~~director of the institutional division~~] awards good conduct time to inmates [~~prisoners~~] in the institutional division [~~department~~] under Chapter 498 [~~Section 498.003~~].

SECTION 1.056. Section 499.026(d), Government Code, is amended to read as follows:

(d) Not later than the 10th day before the date on which a parole panel proposes to release an inmate under this subchapter, the department [~~pardons and paroles division~~] shall give notice of the proposed release to the sheriff, the attorney representing the state, and the district judge of the county in which the defendant was convicted. If there was a change of venue in the case, the department [~~pardons and paroles division~~] shall also notify the sheriff, the attorney representing the state, and the district judge of the county in which the prosecution was originated.

SECTION 1.057. Sections 499.027(b) and (c), Government Code, are amended to read as follows:

(b) An inmate is not eligible under this subchapter to be considered for release to intensive supervision parole if:

(1) the inmate is awaiting transfer to the institutional division, or serving a sentence, for an offense for which the judgment contains an affirmative finding under Section 3g(a)(2), Article 42.12, Code of Criminal Procedure;

(2) the inmate is awaiting transfer to the institutional division, or serving a sentence, for an offense listed in one of the following sections of the Penal Code:

(A) Section 19.02 (murder);

(B) Section 19.03 (capital murder);
 (C) Section 19.04 (~~[voluntary]~~ manslaughter);
 (D) Section 20.03 (kidnapping);
 (E) Section 20.04 (aggravated kidnapping);
 (F) Section 21.11 (indecenty with a child);
 (G) Section 22.011 (sexual assault);
 (H) Section 22.02 ~~[22.021]~~ (aggravated ~~[sexual]~~ assault);
 (I) Section 22.021 (~~aggravated sexual assault~~) ~~[22.03 (deadly assault on law enforcement or corrections officer or court participant)]~~;
 (J) Section 22.04 (injury to a child or an elderly individual);
 (K) Section 25.02 (~~prohibited sexual conduct~~ ~~[incest]~~);
 (L) ~~[Section 25.06 (solicitation of a child);~~
~~(M)]~~ Section 25.08 ~~[25.11]~~ (sale or purchase of a child);
 (N) ~~(M)~~ ~~(N)~~ Section 28.02 (arson);
 (O) ~~(P)~~ ~~(N)~~ Section 29.02 (robbery);
 (P) ~~(Q)~~ ~~(P)~~ Section 29.03 (aggravated robbery);
 (P) ~~(Q)~~ Section 30.02 (burglary), if the offense is punished as a first-degree felony under that section;
 (Q) ~~(R)~~ Section 43.04 (aggravated promotion of prostitution);
 (R) ~~(S)~~ ~~(R)~~ Section 43.05 (compelling prostitution);
 (S) ~~(T)~~ ~~(S)~~ Section 43.24 (sale, distribution, or display of harmful material to minor);
 (T) ~~(U)~~ ~~(T)~~ Section 43.25 (sexual performance by a child);
 (U) ~~(V)~~ ~~(U)~~ Section 46.10 ~~[46.11]~~ (deadly weapon in penal institution);
 (V) ~~(W)~~ ~~(V)~~ Section 15.01 (criminal attempt), if the offense attempted is listed in this subsection;
 (W) ~~(X)~~ ~~(W)~~ Section 15.02 (criminal conspiracy), if the offense that is the subject of the conspiracy is listed in this subsection; or
 (X) ~~(Y)~~ ~~(X)~~ Section 15.03 (criminal solicitation), if the offense solicited is listed in this subsection; or
 (3) the inmate is awaiting transfer to the institutional division, or serving a sentence, for an offense under ~~[listed in one of the following sections of]~~ Chapter 481, Health and Safety Code, punishable by a minimum term of imprisonment or a maximum fine that is greater than the minimum term of imprisonment or the maximum fine for a first degree felony [:
~~(A) Section 481.112(c), 481.113(c), or 481.114(c) (aggravated manufacture or delivery of a controlled substance);~~
~~(B) Section 481.115(c), 481.116(c), 481.117(c), or 481.118(c) (aggravated possession of a controlled substance);~~
~~(C) Section 481.120 (delivery of marihuana) if the offense is punished under Subsection (b)(5) of that section;~~
~~(D) Section 481.120(c) (aggravated delivery of marihuana);~~
 or
~~(E) Section 481.121(c) (aggravated possession of marihuana)].~~
 (c) The department ~~[institutional division]~~ shall provide each county with

necessary assistance to enable the county to identify inmates confined in the county jail who may be eligible under this subchapter to be considered for release.

SECTION 1.058. Section 499.028, Government Code, is amended to read as follows:

Sec. 499.028. **FACILITIES EXPANSION AND IMPROVEMENT REPORT.** The department ~~[institutional division]~~ shall submit a facilities expansion and improvement report to the governor and the Legislative Budget Board not less than once every 60 days. The report must describe all construction projects that will result in the addition or removal of beds from department ~~[the system]~~ capacity, the projected completion dates for each project, and the number of beds that will be added to or removed from capacity on completion of the construction projects.

SECTION 1.059. Section 499.052(a), Government Code, is amended to read as follows:

(a) The institutional division shall establish a program to confine persons who are required to serve not more than 90 days in the institutional division as a condition of a sentence imposed under Section 8, Article 42.12, Code of Criminal Procedure. The ~~[director of the]~~ institutional division may limit the number of persons participating in the program.

SECTION 1.060. Section 499.071, Government Code, is amended to read as follows:

Sec. 499.071. **SCHEDULED ADMISSIONS POLICY** ~~[ALLOCATION FORMULA]~~. ~~[(a)]~~ The board shall adopt and enforce a scheduled admissions policy that permits the institutional division to accept inmates within 45 days of processing as required by Section 499.121(c). ~~[an allocation formula that fairly and equitably allocates to each county the number of institutional division admissions allocated to the county until sufficient capacity is available in the institutional division. In devising the formula, the board shall consider relevant factors for each county served by a department and shall assign weights to those factors as determined appropriate by the board. The factors shall include but are not limited to:~~

~~[(1) the percentage of prison admissions for the entire state that were used by the county in the preceding 12 months;~~

~~[(2) the percentage of the state's violent index crime that occurred in the county in the preceding 12 months;~~

~~[(3) the percentage of the state's total index crime that occurred in the county in the preceding 12 months;~~

~~[(4) the percentage of the state's total arrests under Chapter 481, Health and Safety Code, that occurred in the county in the preceding 12 months;~~

~~[(5) the percentage of the state's population residing in the county;~~

~~[(6) the percentage of the state's total unemployment in the county;~~
and

~~[(7) the percentage of all defendants serving sentences for felonies who were paroled from the institutional division, a jail in this state, a federal correctional institution, or a jail or correctional institution in another state in the preceding 12 months and who were released to reside in the county.~~

~~[(b) The board shall adopt and enforce an allocation formula that fairly and~~

equitably allocates community corrections program funding to each community supervision and corrections department, in the manner provided by Section 10(a)(3), Article 42.13, Code of Criminal Procedure. In devising the formula, the board shall use the factors listed in Subsection (a), but may assign different weights to those factors than those used in developing the admissions allocation formula. The board also may use factors not listed in Subsection (a) in devising the formula under this subsection.

[~~(c) If the board is unable to obtain for a factor listed in Subsection (a) information for the preceding 12-month period, the board shall consider the most recent information available for that factor.~~

[~~(d) The board shall revise each formula annually.~~]

SECTION 1.061. Section 499.102(a), Government Code, is amended to read as follows:

(a) The staff of the institutional division, on its own initiative or as directed by the governor or the board, may recommend to the administration of the institutional division that the maximum capacity established under Section 499.101 for a unit be increased if the staff determines through written findings that the division can increase the maximum capacity and provide:

(1) proper inmate classification and housing within the unit that is consistent with the classification system;

(2) housing flexibility to allow necessary repairs and routine and preventive maintenance to be performed without compromising the classification system;

(3) adequate space in dayrooms;

(4) all meals within a reasonable time, allowing each inmate a reasonable time within which to eat;

(5) operable hygiene facilities that ensure the availability of a sufficient number of fixtures to serve the inmate population;

(6) adequate laundry services;

(7) sufficient staff to:

(A) meet operational and security needs;

(B) meet health care needs, including the needs of inmates requiring psychiatric care, mentally retarded inmates, and physically handicapped inmates;

(C) provide a safe environment for inmates and staff; and

(D) provide adequate internal affairs investigation and review;

(8) medical, dental, and psychiatric care adequate to ensure:

(A) minimal delays in delivery of service from the time sick call requests are made until the service is performed;

(B) access to regional medical facilities;

(C) access to the institutional division hospital at Galveston or contract facilities performing the same services;

(D) access to specialty clinics; and

(E) a sufficient number of psychiatric inpatient beds and sheltered beds for mentally retarded inmates;

(9) a fair disciplinary system that ensures due process and is adequate to ensure safety and order in the unit;

(10) work, vocational, academic, and on-the-job training programs that

afford all eligible inmates with an opportunity to learn job skills or work habits that can be applied on release, appropriately staffed and of sufficient quality;

(11) a sufficient number and quality of nonprogrammatic and recreational activities for all eligible inmates who choose to participate;

(12) adequate assistance from persons trained in the law or a law library with a collection containing necessary materials and space adequate for inmates to use the law library for study related to legal matters;

(13) adequate space and staffing to permit contact and noncontact visitation of all eligible inmates;

(14) adequate maintenance programs to repair and prevent breakdowns caused by increased use of facilities and fixtures; and

(15) space and staff sufficient to provide all the services and facilities required by this section.

SECTION 1.062. Section 499.110, Government Code, is amended to read as follows:

Sec. 499.110. ~~[Applicability of]~~ ADMINISTRATIVE PROCEDURE ~~[and Texas Register]~~ ACT. Subchapter B, Chapter 2001, [The Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes)] applies to all reviews, recommendations, and decisions made under Sections 499.102-499.109.

SECTION 1.063. Section 499.154, Government Code, is amended to read as follows:

Sec. 499.154. CUSTODY STATUS; GOOD CONDUCT TIME. An inmate described by Section 499.152 confined in a transfer facility authorized by this subchapter earns good conduct time in the same manner and subject to the same rules as if the inmate were confined in ~~[a county jail awaiting transfer to]~~ the institutional division.

SECTION 1.064. Section 499.155(a), Government Code, is amended to read as follows:

(a) Except as provided by Subsection (b), the institutional division may not confine an inmate described by Section 499.152 in a transfer facility authorized by this subchapter for a period that exceeds the maximum period for which a state jail felon may be confined in a state jail felony facility under Section 12.35, Penal Code [12 months].

SECTION 1.065. Section 500.001, Government Code, is amended to read as follows:

Sec. 500.001. SUPERVISORY OR DISCIPLINARY AUTHORITY OF INMATES. (a) An inmate housed in a facility operated by the department or under contract with the department ~~[the custody of the institutional division]~~ may not act in a supervisory or administrative capacity over another inmate.

(b) An inmate housed in a facility operated by the department or under contract with the department ~~[the custody of the institutional division]~~ may not administer disciplinary action over another inmate.

SECTION 1.066. Section 500.002, Government Code, is amended to read as follows:

Sec. 500.002. DESTRUCTION OF PROPERTY. (a) An inmate housed in a facility operated by the department or under contract with the department ~~[of the institutional division]~~ is liable for the inmate's intentional damage to

property belonging to the state. If more than one inmate is involved in damage to property, each inmate involved in the damage is jointly and severally liable.

(b) The department ~~[institutional division]~~ shall establish a hearing procedure, giving consideration to the due process rights of inmates, for the adjudication of claims for property damage under this section ~~[article]~~. Damages may be awarded to the department ~~[institutional division]~~ only after a hearing and may not exceed the value of the property damaged.

(c) If at a hearing it is determined that an inmate is liable for property damage, the department ~~[institutional division]~~ may seize the contents of inmate trust funds established for the inmate under ~~[Section 497.056 and]~~ Section 501.014.

(d) An inmate, after exhausting all administrative remedies provided by the grievance system developed under Section 501.008, may appeal a final decision [ruling following a hearing] under this section by filing a petition for judicial review [an appeal] in a district court having jurisdiction in the county in which the alleged damages occurred. On judicial review [appeal], the district court shall follow the rules governing judicial review of contested cases under Subchapter G, Chapter 2001 [Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes)]. Appeals may be taken from the district court as in other civil cases.

(e) If an inmate fails to file a petition seeking judicial review of [appeal] an adverse decision within 30 [60] days after exhausting all administrative remedies [the date of a hearing under Subsection (b)], a district court may not review the final decision [the inmate is barred from appealing the decision].

SECTION 1.067. Section 500.003, Government Code, is amended to read as follows:

Sec. 500.003. GAMBLING PROHIBITED. Gambling is not permitted at any place in a facility operated by or under contract with the department ~~[the institutional division]~~ where inmates are housed or worked. An employee of the department who engages in gambling or knowingly permits gambling at any place where inmates are housed or worked is subject to immediate dismissal.

SECTION 1.068. Section 500.005, Government Code, is amended to read as follows:

Sec. 500.005. REWARDS ON ESCAPE. The director of the institutional division, in compliance with [with the approval of the] board policy, may offer a reward for the apprehension of an escaped inmate. The director may determine the amount of the reward and the manner in which the reward is to be paid.

SECTION 1.069. Section 500.006, Government Code, is amended to read as follows:

Sec. 500.006. TRANSPORTATION OF INMATES. (a) The department ~~[director of the institutional division]~~ shall establish policies [adopt rules] to provide for the safe transfer of inmates ~~[from the counties in which inmates are sentenced to the institutional division]~~. A sheriff may transport inmates to the institutional division if the sheriff is able to perform the service as economically as if the service were performed by the division. The institutional division is responsible for the cost of transportation of inmates to the division.

(b) An inmate may not be transported directly from a county jail to an

institutional division facility other than a designated diagnostic unit or a transfer facility [farm]. ~~[The institutional division shall designate units as receiving stations and all inmates must be initially transported to a receiving station. At the receiving station:~~

~~[(1) the institutional division shall determine what type of labor the inmate may reasonably perform; and~~

~~[(2) the director of the institutional division shall require each inmate to make a statement containing:~~

~~[(A) a brief history of the inmate's life that states where the inmate has resided and other facts that describe the inmate's past habits and character; and~~

~~[(B) names and mailing addresses of the inmate's immediate relatives.~~

~~[(c) The director of the institutional division shall attempt to verify or disprove the accuracy of the statement if practicable.~~

~~[(d) The director of the institutional division shall retain the statement.]~~

SECTION 1.070. Section 501.002, Government Code, is amended to read as follows:

Sec. 501.002. ASSAULT BY EMPLOYEE ON INMATE. If an employee of the department ~~[institutional division]~~ commits an assault on an inmate housed in a facility operated by or under contract with the department, the executive director ~~[of the institutional division]~~ shall file a complaint with the proper official of the county in which the offense occurred. If an employee is charged with an assault described by this section, an inmate or person who was an inmate at the time of the alleged offense may testify in a prosecution of the offense.

SECTION 1.071. Section 501.003, Government Code, is amended to read as follows:

Sec. 501.003. FOOD. The department ~~[director of the institutional division]~~ shall ensure that inmates housed in facilities operated by the department are fed good and wholesome food, prepared under sanitary conditions, and provided in sufficient quantity and reasonable variety. The department ~~[director of the institutional division]~~ shall hold employees charged with preparing food for inmates strictly to account for a failure to carry out this section. The department ~~[director of the institutional division]~~ shall provide for the training of inmates as cooks so that food for inmates may be properly prepared.

SECTION 1.072. Section 501.004, Government Code, is amended to read as follows:

Sec. 501.004. CLOTHING. The department ~~[institutional division]~~ shall provide to inmates housed in facilities operated by the department suitable clothing that is of substantial material, uniform make, and reasonable fit and footwear that is substantial and comfortable. The department ~~[institutional division]~~ may not allow an inmate to wear clothing that is not furnished by the department ~~[division]~~, except as a reward for meritorious conduct. The department ~~[director of the institutional division]~~ may allow inmates to wear underwear not furnished by the department ~~[institutional division]~~.

SECTION 1.073. Section 501.005, Government Code, is amended to read as follows:

Sec. 501.005. LITERACY PROGRAMS. (a) The institutional division shall establish a program to teach reading to functionally illiterate inmates housed in facilities operated by the division. The institutional division shall allow an inmate who is capable of serving as a tutor to tutor functionally illiterate inmates and shall actively encourage volunteer organizations to aid in the tutoring of inmates. The institutional division, the inmate to be tutored, and the person who tutors the inmate jointly shall establish reading goals for the inmate to be tutored. A person who acts as a tutor may only function as a teacher and advisor to an inmate and may not exercise supervisory authority or control over the inmate.

(b) The institutional division shall require illiterate inmates housed in facilities operated by the division to receive not less than five or more than eight hours a week of reading instruction.

(c) The institutional division shall identify functionally illiterate inmates housed in facilities operated by the division and shall inform the parole [pardons and paroles] division if it determines that an inmate who is to be released to the supervision of the parole [pardons and paroles] division is in need of continuing education after release from the institutional division.

SECTION 1.074. Section 501.006, Government Code, is amended to read as follows:

Sec. 501.006. EMERGENCY ABSENCE [TEMPORARY FURLOUGHS].

(a) The institutional division may grant an emergency absence under escort [a medical furlough] to an inmate so that the inmate may:

(1) obtain a medical diagnosis or medical treatment;

(2) obtain ~~[-The institutional division may impose security conditions determined by the board to be necessary and proper on an inmate during the inmate's furlough:~~

~~[(b) The institutional division may grant a mental health or mental retardation furlough so that an inmate may be transferred to a Texas Department of Mental Health and Mental Retardation facility for] treatment and supervision at a Texas Department of Mental Health and Mental Retardation facility; or[-]~~

(3) ~~[(c) The institutional division may grant a temporary furlough of not more than seven days to an inmate determined to be an acceptable security risk by the division. The institutional division may grant a furlough under this subsection so that the inmate may] attend a funeral or[-] visit a critically ill relative[-; or for any other reason determined appropriate by the division].~~

~~[(d) The institutional division may extend a temporary furlough granted under Subsection (c) for not more than 10 additional days, if the division determines that circumstances warrant the extension. The board may not grant more than two furloughs to an inmate in one calendar year unless the Board of Pardons and Paroles and the governor approve an additional furlough for the inmate, in the same manner as the board and the governor approve emergency reprieves.]~~

~~(b) [(e)]~~ The institutional division shall adopt policies [rules] for the administration of the emergency absence under escort [temporary furlough] program ~~[and the legislature intends that furloughs be given. The rules must state that furloughs are granted as the institutional division determines and are not given in consideration of the county, region, or state to which an inmate is to be furloughed.]~~

~~[(f) The institutional division shall notify the pardons and paroles division if the institutional division grants a temporary furlough under this section and shall notify the pardons and paroles division of the inmate's return to the institutional division].~~

~~(c) [(g)] An inmate absent [furloughed] under this section [and an inmate granted an emergency reprieve by the Board of Pardons and Paroles and the governor] is considered to be in the custody of the institutional division, and [even if] the inmate must be [is not] under physical guard while absent [on furlough]. [If an inmate described by this subsection does not return to the institutional division at the time specified for the inmate's return, the inmate is an escapee for the purposes of Section 38.07, Penal Code.]~~

~~[(h) The state may not pay for the transportation of an inmate on temporary furlough unless the inmate is under physical guard during the furlough.]~~

~~[(i) The institutional division may not grant a furlough to an inmate convicted of an offense under Section 42.07(a)(7), Penal Code.]~~

SECTION 1.075. Section 501.007, Government Code, is amended to read as follows:

Sec. 501.007. INMATE CLAIMS FOR LOST OR DAMAGED PROPERTY. The department [~~institutional division~~] may pay from the miscellaneous funds appropriated to the division claims made by inmates housed in facilities operated by the department for property lost or damaged by the division. The department [~~institutional division~~] shall maintain a record of all transactions made under this section and shall send a copy of that record to the state auditor at least annually. The record must show the amount of each claim paid, the identity of each claimant, and the purpose for which each claim was made. The department [~~institutional division~~] may not pay under this section more than \$500 on a claim.

SECTION 1.076. Section 501.009, Government Code, is amended to read as follows:

Sec. 501.009. VOLUNTEER ORGANIZATIONS. The department [~~institutional division~~] shall actively encourage volunteer organizations to provide the following programs for inmates housed in facilities operated by [~~confined in~~] the department [~~division~~]:

- (1) literacy and education programs;
- (2) life skills programs;
- (3) job skills programs;
- (4) parent-training programs;
- (5) drug and alcohol rehabilitation programs;
- (6) support group programs;
- (7) arts and crafts programs; and

(8) other programs determined by the department [~~division~~] to aid inmates in the transition between confinement and society and to reduce incidence of recidivism among inmates.

SECTION 1.077. Section 501.010, Government Code, is amended to read as follows:

Sec. 501.010. VISITORS. (a) The institutional division shall allow the governor, members of the legislature, and members of the executive and judicial

branches to enter at proper hours any part of a facility operated by the division where inmates are housed or worked, for the purpose of observing the operations of the division. A visitor described by this subsection may talk with inmates away from institutional division employees.

(b) The institutional division shall have a uniform visitation policy that allows eligible inmates housed in facilities operated by [in] the division, other than state jails, to receive visitors. The institutional division shall require each warden in the division to:

- (1) apply the policy in the unit under the warden's control;
- (2) prominently display copies of the policy in locations in the unit that are accessible to inmates or visitors; and
- (3) if requested, provide visitors with copies of the policy.

(c) At the end of each biennium, each warden in the institutional division shall report to the director of the division on the manner in which the policy has affected visitation at the warden's unit during the preceding two years.

SECTION 1.078. Sections 501.011(a) and (h), Government Code, are amended to read as follows:

(a) The Role of the Family in Reducing Recidivism Advisory Committee to the institutional division of the Texas Department of Criminal Justice and the Texas Youth Commission consists of a representative of the institutional division, a representative of the state jail division, a representative of the Texas Youth Commission, a representative of the parole [pardons and paroles] division, a representative of the attorney general's office, a representative of the Community Services Division of the Texas Youth Commission, two members appointed by the governor, two members appointed by the lieutenant governor, and two members appointed by the speaker of the Texas House of Representatives. Each appointed member must be a citizen of the state and should have a knowledge of corrections or juvenile justice issues. The officer appointing the member shall give preference to appointees who are or have been family members of inmates or juveniles detained in Texas Youth Commission facilities.

(h) The advisory committee shall make studies of and make recommendations to the department [institutional division] and to the legislature relating to:

- (1) visitation policies in facilities operated by the department [institutional division];
- (2) the availability and effectiveness of rehabilitation programs in facilities operated by the department [institutional division];
- (3) the efficiency of educational and vocational programs in facilities operated by the department [institutional division];
- (4) special problems faced by inmates with children;
- (5) the special needs of indigent inmates;
- (6) policies and laws relating to the distribution of release money to inmates; and
- (7) other issues of special interest to families with a relative housed in a facility operated by the department [institutional division].

SECTION 1.079. Section 501.012, Government Code, is amended to read as follows:

Sec. 501.012. FAMILY LIAISON OFFICER. The director of the institutional division shall designate one employee at each facility operated by [unit in] the institutional division to serve as family liaison officer for that facility [unit]. The family liaison officer shall facilitate the maintenance of ties between inmates and their families for the purpose of reducing recidivism. Each family liaison officer shall:

(1) provide inmates' relatives with information about the classification status, location, and health of inmates in the facility [unit];

(2) notify inmates about emergencies involving their families and provide inmates with other necessary information relating to their families; and

(3) assist inmates' relatives and other persons during visits with inmates and aid those persons in resolving problems that may affect permitted contact with inmates.

SECTION 1.080. Section 501.013, Government Code, is amended to read as follows:

Sec. 501.013. MATERIALS USED FOR ARTS AND CRAFTS. (a) The institutional division may purchase materials to be used by inmates housed in facilities operated by the division to produce arts and crafts.

(b) The institutional division may allow an inmate housed in a facility operated by the division who produces arts and crafts in the division to sell those arts and crafts to the general public in a manner determined by the division.

(c) If an inmate housed in a facility operated by the division sells arts and crafts and the materials used in the production of the arts and crafts were provided by the ~~[institutional]~~ division, the proceeds of the sale go first to the division to pay for the cost of the materials, and the remainder, if any, goes to the inmate. The institutional division may not purchase more than \$30 of materials for any inmate unless the inmate has repaid the division in full for previous purchases of materials.

SECTION 1.081. Section 501.014, Government Code, is amended to read as follows:

Sec. 501.014. INMATE MONEY. (a) The ~~[director of the]~~ institutional division shall take possession of all money that an inmate has on the inmate's person when the inmate arrives at a facility operated by the institutional division and all money the inmate receives at the department after arriving at a facility operated by the division and shall credit the money to a trust fund created for the inmate. The institutional division shall carefully search an inmate when the inmate arrives at a facility operated by the division. The ~~[director of the]~~ institutional division may spend money from a trust fund on the written order of the inmate in whose name the fund is established subject to restrictions on the expenditure established by law or policy [rule]. The department shall ensure that each facility operated by or under contract with the department shall operate a trust fund system that complies with this section, but the department is not required to operate a separate trust fund system for each facility.

(b) If an inmate with money in a trust fund established under Subsection (a) dies while confined in a facility operated by the institutional division or escapes or is discharged and does not claim the money, the ~~[director of the]~~ institutional division shall attempt to give notice of the fund to the discharged

inmate or to the beneficiary or nearest known relative of a deceased, escaped, or discharged inmate. On the presentation of a claim to the money by a person entitled to the notice, the ~~[director of the]~~ institutional division shall pay the money to the claimant.

(c) If money is unclaimed two years after the ~~[director of the]~~ institutional division gives or attempts to give notice under Subsection (b), or two years after the date of the death of an inmate whose beneficiary or nearest relative is unknown, the director of the institutional division shall make an affidavit stating that the money is unclaimed and send the affidavit and money to the state treasurer.

(d) Money forfeited to the state treasurer under Subsection (c) escheats to the state.

(e) On notification by a court, the ~~[director of the]~~ institutional division shall withdraw from an inmate's trust fund any amount the inmate is ordered to pay by order of the court for child support, restitution, fines, and court costs. The institutional division ~~[director]~~ shall make a payment under this subsection as ordered by the court to either the court or the party specified in the court order. The ~~[director, the]~~ institutional division~~;~~ and the department are not liable for withdrawing or failing to withdraw money or making payments or failing to make payments under this subsection. The institutional division ~~[director]~~ shall make withdrawals and payments from an inmate's trust fund under this subsection according to the following schedule of priorities:

- (1) as payment in full for all orders for child support;
- (2) as payment in full for all orders for restitution;
- (3) as payment in full for all orders for fines; and
- (4) as payment in full for all orders for court costs.

(f) The institutional division may place a hold on funds in an inmate trust fund:

(1) to restore amounts withdrawn by the inmate against uncollected funds;

(2) to correct accounting errors;

(3) to make restitution for wrongful withdrawals made by an inmate from the trust fund of another inmate;

(4) to cover deposits until cleared;

(5) as directed by court order; or

(6) as part of an investigation by the department of inmate conduct involving the use of trust funds or an investigation in which activity in the trust fund is evidence.

SECTION 1.082. Section 501.015(c), Government Code, is amended to read as follows:

(c) The department ~~[director of the institutional division]~~ may spend not more than \$200 to defray the costs of transportation or other expenses related to the burial of an inmate who dies while confined in a facility operated by the institutional division.

SECTION 1.083. Section 501.016, Government Code, is amended to read as follows:

Sec. 501.016. DISCHARGE OR RELEASE PAPERS; RELEASE DATE.

(a) The department ~~[director of the institutional division or the director's]~~

~~executive assistant~~] shall prepare and provide an inmate with the inmate's discharge or release papers when the inmate is entitled to be discharged or to be released on parole, mandatory supervision, or conditional pardon. The papers must be dated and signed by the officer preparing the papers and bear the seal of the department ~~[board]~~. The papers must contain:

- (1) the inmate's name;
- (2) a statement of the offense or offenses for which the inmate was sentenced;
- (3) the date on which the defendant was sentenced and the length of the sentence;
- (4) the name of the county in which the inmate was sentenced;
- (5) the amount of calendar time the inmate actually served;
- (6) a statement of any trade learned by the inmate and the inmate's proficiency at that trade; and
- (7) the physical description of the inmate, as far as practicable.

(b) If the release date of an inmate occurs on a Saturday, Sunday, or legal holiday, the department ~~[director of the institutional division]~~ may release the inmate on the preceding workday.

SECTION 1.084. Section 501.017, Government Code, is amended to read as follows:

Sec. 501.017. COST OF CONFINEMENT AS CLAIM. (a) The department ~~[institutional division]~~ may establish a claim and lien against the estate of an inmate who dies while confined in a facility operated by or under contract with the department ~~[division]~~ for the cost to the department ~~[division]~~ of the inmate's confinement.

(b) The department ~~[institutional division]~~ may not enforce a claim or lien established under this section if the inmate has a surviving spouse or a surviving dependent or disabled child.

(c) The department ~~[institutional division]~~ shall adopt policies ~~[rules]~~ regarding recovery of the cost of confinement through enforcement of claims or liens established under this section. ~~[The Criminal Justice Policy Council shall monitor the activity of the institutional division in establishing and enforcing claims or liens under this section. If the council determines that the benefits obtained by the institutional division do not exceed the costs to the division of establishing and enforcing claims or liens, the council shall direct the division to discontinue establishing claims and liens under this section.]~~

SECTION 1.085. Subchapter A, Chapter 501, Government Code, is amended by adding Section 501.021 to read as follows:

Sec. 501.021. USE OF INMATES IN TRAINING PROHIBITED. The department may not use an inmate in a program that trains dogs to attack individuals without the inmate's permission.

SECTION 1.086. Section 501.051, Government Code, is amended to read as follows:

Sec. 501.051. MEDICAL FACILITIES AT UNIVERSITY OF TEXAS MEDICAL BRANCH. (a) The medical facility constructed by the institutional division at The University of Texas Medical Branch at Galveston shall be used as a teaching facility and be limited to patients who are teaching patients, as long as the medical facility is used for the treatment of department ~~[division]~~

patients. The Board of Regents of The University of Texas System shall maintain and operate the facility and provide professional staff services necessary for the care of patients in the facility, except that the department [~~institutional division~~] shall provide security at the facility. The facility shall provide the same level of care as is provided for patients in other facilities of The University of Texas Medical Branch at Galveston.

(b) If the medical facility ceases to be used for department [~~institutional division~~] patients, the facility shall revert to the medical branch for its use and be operated under the exclusive management and control of the Board of Regents of The University of Texas System.

(c) The medical facility shall be operated with funds appropriated for that purpose.

(d) The department [~~institutional division~~] shall establish and maintain an overnight holding facility for inmate outpatients at The University of Texas Medical Branch at Galveston.

(e) The department [~~institutional division~~] and The University of Texas Medical Branch at Galveston shall by rule adopt a memorandum of understanding that establishes the responsibilities of the department [~~division~~] and the medical branch in maintaining the department's [~~division's~~] medical facility, providing security, and providing medical care. The memorandum must also establish a joint peer review committee and a joint utilization review committee. Each committee shall be composed of medical personnel employed by the department [~~institutional division~~] and by the medical branch. The joint peer review committee shall review all case files to determine whether the quality of medical care provided is adequate, according to accepted medical standards. The joint utilization review committee shall review all case files to determine whether treatment given is medically necessary under the circumstances of each case, taking into account accepted medical standards. The department [~~institutional division~~] shall coordinate the development of the memorandum of understanding.

SECTION 1.087. Section 501.052, Government Code, is amended to read as follows:

Sec. 501.052. MEDICAL RESIDENCIES. The department [~~institutional division~~] may establish a residency program or a rotation program to employ or train physicians to treat inmates in the department [~~division~~].

SECTION 1.088. Section 501.053, Government Code, is amended to read as follows:

Sec. 501.053. REPORTS OF PHYSICIAN MISCONDUCT. (a) If the department [~~institutional division~~] receives an allegation that a physician employed or under contract with the department [~~division~~] has committed an action that constitutes a ground for the denial or revocation of the physician's license under Section 3.08, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), the department [~~division~~] shall report the information to the Texas State Board of Medical Examiners in the manner provided by Section 4.02 of that Act.

(b) The department [~~institutional division~~] shall provide the Texas State Board of Medical Examiners with a copy of any report or finding relating to an investigation of an allegation reported to the board.

SECTION 1.089. Section 501.054, Government Code, is amended to read as follows:

Sec. 501.054. AIDS AND HIV EDUCATION; TESTING. (a) In this section, "AIDS," "HIV," and "test result" have the meanings assigned by Section 81.101, Health and Safety Code.

(b) The department ~~[institutional division]~~, in consultation with the Texas Department of Health, shall establish education programs to educate inmates and employees of the department ~~[division]~~ about AIDS and HIV. In establishing the programs for inmates, the department ~~[institutional division]~~ shall design a program that deals with issues related to AIDS and HIV that are relevant to inmates while confined and a program that deals with issues related to AIDS and HIV that will be relevant to inmates after the inmates are released ~~[from the division]~~. The department ~~[institutional division]~~ shall design the programs to take into account relevant cultural and other differences among inmates. The department ~~[institutional division]~~ shall require each inmate in a facility operated by the department ~~[division]~~ to participate in education programs established under this subsection.

(c) The department ~~[director of the institutional division]~~ shall require each employee of the department ~~[division]~~ to participate in programs established under this section at least once during each calendar year.

(d) The department ~~[director of the institutional division]~~ shall ensure that education programs for employees include information and training relating to infection control procedures. The department ~~[director]~~ shall also ensure that employees have infection control supplies and equipment readily available.

(e) The department ~~[institutional division]~~, in consultation with the Texas Department of Health, shall periodically revise education programs established under this section so that the programs reflect the latest medical information available on AIDS and HIV.

(f) The department ~~[institutional division]~~ shall adopt a policy for handling persons with AIDS or HIV infection who are in the ~~[division's]~~ custody of the department or under the department's supervision. The policy must be substantially similar to a model policy developed by the Texas Department of Health under Subchapter G, Chapter 85, Health and Safety Code ~~[Article 4419b-3, Revised Statutes]~~.

(g) The department ~~[institutional division]~~ shall maintain the confidentiality of test results of an inmate indicating HIV infection after the inmate's discharge, release from a state jail, or release on parole or mandatory supervision and may not honor the request of an agency of the state or any person who requests a test result as a condition of housing or supervising the inmate while the inmate is on community supervision or parole or mandatory supervision, unless honoring the request would improve the ability of the inmate to obtain essential health and social services.

(h) The department ~~[institutional division]~~ shall report to the legislature not later than January 15 of each odd-numbered year concerning the implementation of this section and the participation of inmates and employees of the department ~~[division]~~ in education programs established under this section.

(i) The institutional division may test an inmate confined in a facility operated by the division for human immunodeficiency virus. If the institutional

division determines that an inmate has a positive test result, the division may segregate the inmate from other inmates.

SECTION 1.090. Section 501.055, Government Code, is amended to read as follows:

Sec. 501.055. REPORT OF INMATE DEATH~~[-CRIMINAL PENALTY]~~.

(a) If an inmate dies while confined in a facility operated by or under contract with the department ~~[the custody of the institutional division]~~, ~~[the director of the institutional division, or]~~ an employee of the facility who is ~~[division]~~ in charge of the inmate shall immediately notify the nearest justice of the peace serving in the county in which the inmate died and the office of internal affairs for the department. The justice shall personally inspect the body and make an inquiry as to the cause of death. The justice shall make written copies of evidence taken during the inquest, and give one copy to the director and one copy to a district judge serving in the county in which the inmate died. The judge shall provide the copy to the grand jury and, if the judge determines the evidence indicates wrongdoing, instruct the grand jury to thoroughly investigate the cause of death.

(b) Subsection (a) does not apply if the inmate:

(1) dies of natural causes while attended by a physician and an autopsy is scheduled to be performed; or

(2) is lawfully executed ~~[An employee of the institutional division commits an offense if the employee is in charge of an inmate who dies and the employee fails to immediately notify a justice of the peace of the death in the manner required by Subsection (a):~~

~~[(c) An offense under Subsection (b) is a misdemeanor punishable by:~~

~~[(1) a fine of not less than \$100 or more than \$500; and~~

~~[(2) confinement in jail for not less than 60 days or more than one year].~~

SECTION 1.091. Section 501.056, Government Code, is amended to read as follows:

Sec. 501.056. CONTRACT FOR CARE OF MENTALLY ILL AND MENTALLY RETARDED INMATES. The department ~~[institutional division]~~ shall contract with the Texas Department of Mental Health and Mental Retardation for provision of Texas Department of Mental Health and Mental Retardation facilities, treatment, and habilitation for mentally ill and mentally retarded inmates in the custody of the department ~~[division]~~. The contract must provide:

(1) detailed characteristics of the mentally ill inmate population and the mentally retarded inmate population to be affected under the contract;

(2) for the respective responsibilities of the Texas Department of Mental Health and Mental Retardation and the department ~~[institutional division]~~ with regard to the care and supervision of the affected inmates; and

(3) that the department ~~[division]~~ remains responsible for security.

SECTION 1.092. Section 501.057, Government Code, is amended to read as follows:

Sec. 501.057. CIVIL COMMITMENT BEFORE PAROLE. (a) The department ~~[institutional division and the pardons and paroles division]~~ shall establish a system to identify mentally ill inmates who are nearing eligibility for release on parole.

(b) ~~[The institutional division shall provide the pardons and paroles division with the names of inmates determined by the institutional division to be mentally ill.]~~ Not later than the 30th day before the initial parole eligibility date of an inmate identified as mentally ill, ~~[the pardons and paroles division shall notify the institutional division that the inmate is about to reach the inmate's initial parole eligibility date. After receiving notice under this subsection,]~~ an institutional division psychiatrist shall examine the inmate. The psychiatrist shall file a sworn application for court-ordered temporary mental health services under Chapter 574 [3], ~~[Texas Mental]~~ Health and Safety Code ~~[(Article 5547-26 et seq., Vernon's Texas Civil Statutes)]~~, if the psychiatrist determines that the inmate is mentally ill and as a result of the illness the inmate meets at least one of the criteria listed in Section 574.034 [50], ~~[Texas Mental]~~ Health and Safety Code ~~[(Article 5547-50, Vernon's Texas Civil Statutes)]~~.

(c) The psychiatrist shall include with the application a sworn certificate of medical examination for mental illness in the form prescribed by Section 574.011 [33], ~~[Texas Mental]~~ Health and Safety Code ~~[(Article 5547-33, Vernon's Texas Civil Statutes)]~~.

(d) The institutional division is liable for costs incurred for a hearing under Chapter 574 [3], ~~[Texas Mental]~~ Health and Safety Code ~~[(Article 5547-26 et seq., Vernon's Texas Civil Statutes)]~~, that follows an application filed by a division psychiatrist under this section.

SECTION 1.093. Section 501.093(a), Government Code, is amended to read as follows:

(a) The department ~~[institutional division, the pardons and paroles division]~~, the Texas Department of Mental Health and Mental Retardation, and the Texas Commission on Alcohol and Drug Abuse shall by rule adopt a memorandum of understanding that establishes their respective responsibilities to establish a continuity of care program for inmates with a history of drug or alcohol abuse.

SECTION 1.094. Sections 501.0931(f) and (i), Government Code, are amended to read as follows:

(f) The institutional division shall employ or contract with ~~[through the Texas Commission on Alcohol and Drug Abuse to provide]~~ qualified professionals to implement the program. For purposes of this subsection, a "qualified professional" is a person who:

(1) is a certified alcohol and drug abuse counselor;

(2) is a certified social worker or advanced clinical practitioner and who has at least two years of experience in chemical dependency counseling; or

(3) is a licensed professional counselor, physician, or psychologist and who has at least two years of experience in chemical dependency counseling.

(i) The institutional division shall provide at least 800 beds for housing participants in the program[;]

~~[(1) at least 450 beds for male inmates and 50 beds for female inmates in fiscal year 1992;~~

~~[(2) at least 900 beds for male inmates and 100 beds for female inmates in fiscal year 1993;~~

~~[(3) at least 1,300 beds for male inmates and 200 beds for female inmates in fiscal year 1994; and~~

~~[(4) at least 1,700 beds for male inmates and 300 beds for female inmates in fiscal year 1995 and each fiscal year after that year]. The institutional division not less often than every two years shall determine whether the division should increase the number of beds provided by the division for the program.~~

SECTION 1.095. Section 501.095(a), Government Code, is amended to read as follows:

(a) ~~The department [institutional division, the pardons and paroles division,]~~ and the Texas Employment Commission shall by rule adopt a memorandum of understanding that establishes their respective responsibilities to establish a continuity of care program for inmates with a history of chronic unemployment.

SECTION 1.096. Section 501.096(d), Government Code, is amended to read as follows:

(d) ~~The department [institutional division and the pardons and paroles division]~~ shall ~~determine [cooperate in determining]~~ the special needs of inmates who have served long terms of confinement in the institutional division and shall identify and develop community resources to meet those needs.

SECTION 1.097. Section 507.001, Government Code, is amended to read as follows:

Sec. 507.001. **AUTHORITY TO OPERATE OR CONTRACT FOR STATE JAIL FELONY FACILITIES.** (a) The state jail division may operate, maintain, and manage state jail felony facilities to confine inmates described by Section 507.002, and the ~~department~~ board may finance and construct those facilities. The state jail division, with the approval of the board, may contract with the institutional division, a private vendor, a community supervision and corrections department, or the commissioners court of a county for the construction, operation, maintenance, or management of a state jail felony facility. The community justice assistance division shall assist the state jail division to, ~~with the approval of the board, may~~ contract with ~~[or make a grant to]~~ a community supervision and corrections department for the construction, operation, maintenance, or management of a state jail felony facility. The state jail division shall consult with the community justice assistance division before contracting with a community supervision and corrections department under this section. A community supervision and corrections department or the commissioners court of a county that contracts ~~[or receives a grant]~~ under this section may subcontract with a private vendor for the provision of any or all services described by this subsection. A community supervision and corrections department that contracts ~~[or receives a grant]~~ under this section may subcontract with the commissioners court of a county for the provision of any or all services described by this subsection. The board may contract with a private vendor or the commissioners court of a county for the financing or construction of a state jail felony facility.

(b) The community justice assistance division and the state jail division shall develop and implement, ~~after consultation with the advisory committee on community supervision and corrections department management to the judicial advisory council to the community justice assistance division, shall adopt reasonable rules and procedures establishing minimum requirements for]~~ work programs and programs of rehabilitation, education, and recreation in state

jail felony facilities [~~operated under contracts with or grants from the community justice assistance division~~]. For each state jail felony facility [~~operated by or for the state jail division~~], the community justice assistance division and the state jail division shall consult with [~~request the assistance of~~] the community supervision and corrections departments and the community justice councils served by the facility in developing [~~work~~] programs [~~and programs of rehabilitation, education, and recreation for defendants confined~~] in that [~~the~~] facility, and shall develop the programs in a manner that makes appropriate use of facilities and personnel of the community supervision and corrections departments. In developing the programs, the state jail division and the community justice assistance division shall attempt to structure programs so that they are operated on a 90-day cycle, although the divisions should deviate from a 90-day schedule as necessary to meet the requirements of a particular program.

(c) Services [~~The board shall ensure that a service~~] described by Subsection (a) must be [~~is~~] provided in compliance with standards established by the board[, ~~whether the board, the state jail division, or the community justice assistance division provides the service or contracts with or makes a grant to an entity listed in Subsection (a) for the provision of the service~~]. Programs [~~The board shall ensure that a program~~] described by Subsection (b) must be [~~is~~] provided in compliance with minimum requirements established under Subsection (b)[, ~~whether the state jail division or the community justice assistance division provides the service or contracts with or makes a grant to an entity listed in Subsection (a) for the provision of the service~~].

(d) A state jail felony facility authorized by this subchapter may be located on private land or on land owned by the federal government, the state, a community supervision and corrections department, or a political subdivision of the state. The board may accept land donated for that purpose.

(e) A commissioners court of a county or a community supervision and corrections department may not enter into a contract [~~or receive a grant~~] under this section unless:

(1) the commissioners court or department first consults with the community justice council serving the county or serving the department; and

(2) the most recent community justice plan for the county or department served by the community justice council that has been approved by the community justice assistance division describes the contract [~~or grant~~].

SECTION 1.098. Section 507.006(a), Government Code, is amended to read as follows:

(a) Notwithstanding any other provision of this subchapter, the state jail division, with the approval of the board, may designate one or more state jail felony facilities to house inmates who are eligible for confinement in a transfer facility under Section 499.152, but only if the designation does not deny placement in a state jail felony facility of defendants required to serve terms of confinement in a facility following conviction of state jail felonies. The division may not house in a state jail felony facility an inmate who:

(1) has a history of or has shown a pattern of violent or assaultive behavior in county jail or a facility operated by the department; or

(2) will increase the likelihood of harm to the public if housed in the facility.

SECTION 1.099. Subchapter B, Chapter 507, Government Code, is amended by adding Section 507.028 to read as follows:

Sec. 507.028. FURLOUGH PROGRAM. (a) The director of a state jail felony facility may grant a furlough to a defendant so that the defendant may:

- (1) obtain a medical diagnosis or medical treatment;
- (2) obtain treatment and supervision at a Texas Department of Mental Health and Mental Retardation facility;
- (3) attend a funeral or visit a critically ill relative; or
- (4) participate in a programmatic activity sanctioned by the state jail division.

(b) The state jail division shall adopt policies for the administration of the furlough program.

(c) A defendant furloughed under this section is considered to be in the custody of the state jail division, even if the defendant is not under physical guard while furloughed.

SECTION 1.100. Subchapter B, Chapter 507, Government Code, is amended by adding Section 507.029 to read as follows:

Sec. 507.029. USE OF INMATE LABOR. The department may use the labor of inmates of the institutional division in any work or community service program or project performed by the state jail division.

SECTION 1.101. Subchapter B, Chapter 507, Government Code, is amended by adding Section 507.030 to read as follows:

Sec. 507.030. VISITATION. (a) The state jail division shall allow the governor, members of the legislature, and officials of the executive and judicial branches to enter during business hours any part of a facility operated by the division, for the purpose of observing the operations of the division. A visitor described by this subsection may talk with defendants away from division employees.

(b) The state jail division shall establish a visitation policy for persons confined in state jail felony facilities.

SECTION 1.102. (a) The chapter heading of Chapter 495, Government Code, is amended to read as follows:

~~CHAPTER 495. [INSTITUTIONAL DIVISION:] CONTRACTS
FOR CORRECTIONAL FACILITIES AND SERVICES~~

(b) The chapter heading of Chapter 496, Government Code, is amended to read as follows:

~~CHAPTER 496. [INSTITUTIONAL DIVISION:] LAND AND PROPERTY~~

(c) The subchapter heading of Subchapter A, Chapter 496, Government Code, is amended to read as follows:

~~SUBCHAPTER A. [INSTITUTIONAL DIVISION] LAND~~

(d) The chapter heading of Chapter 497, Government Code, is amended to read as follows:

~~CHAPTER 497. [INSTITUTIONAL DIVISION:] INDUSTRY
AND AGRICULTURE; LABOR OF INMATES~~

(e) The chapter heading of Chapter 499, Government Code, is amended to read as follows:

~~CHAPTER 499. [INSTITUTIONAL DIVISION:] POPULATION
MANAGEMENT; SPECIAL PROGRAMS~~

(f) The chapter heading of Chapter 500, Government Code, is amended to read as follows:

CHAPTER 500. [~~INSTITUTIONAL DIVISION~~] MISCELLANEOUS
DISCIPLINARY MATTERS

(g) The chapter heading of Chapter 501, Government Code, is amended to read as follows:

CHAPTER 501. [~~INSTITUTIONAL DIVISION~~] INMATE WELFARE

SECTION 1.103. Section 38.01(2), Penal Code, is amended to read as follows:

(2) "Escape" means unauthorized departure from custody or failure to return to custody following temporary leave for a specific purpose or limited period or leave that is part of an intermittent sentence, but does not include a violation of conditions of community supervision or parole other than conditions that impose a period of confinement in a secure correctional facility.

SECTION 1.104. Section 39.05, Penal Code, is amended to read as follows:

Sec. 39.05. FAILURE TO REPORT DEATH OF PRISONER. (a) A person commits an offense if the person is required to conduct an investigation and file a report by Article 49.18, Code of Criminal Procedure, and the person fails to investigate the death, fails to file the report as required, or fails to include in a filed report facts known or discovered in the investigation.

(b) A person commits an offense if the person is required by Section 501.055, Government Code, to:

(1) give notice of the death of an inmate and the person fails to give the notice; or

(2) conduct an investigation and file a report and the person:

(A) fails to conduct the investigation or file the report; or

(B) fails to include in the report facts known to the person or discovered by the person in the investigation.

(c) An offense under this section is a Class B misdemeanor.

SECTION 1.105. Article 49.04(a), Code of Criminal Procedure, is amended to read as follows:

(a) A justice of the peace shall conduct an inquest into the death of a person who dies in the county served by the justice if:

(1) the person dies in prison under circumstances other than those described by Section 501.055(b), Government Code, or in jail;

(2) the person dies an unnatural death from a cause other than a legal execution;

(3) the body of the person is found and the cause or circumstances of death are unknown;

(4) the circumstances of the death indicate that the death may have been caused by unlawful means;

(5) the person commits suicide or the circumstances of the death indicate that the death may have been caused by suicide;

(6) the person dies without having been attended by a physician;

(7) the person dies while attended by a physician who is unable to certify the cause of death and who requests the justice of the peace to conduct an inquest; or

(8) the person is a child who is younger than 18 months of age and the suspected cause of death is sudden infant death syndrome.

SECTION 1.106. Article 49.18, Code of Criminal Procedure, is amended by adding Subsection (c) to read as follows:

(c) This article does not apply to a death that occurs in a facility operated by or under contract with the Texas Department of Criminal Justice.

SECTION 1.107. Chapter 614, Health and Safety Code, is amended by adding Section 614.017 to read as follows:

Sec. 614.017. EXCHANGE OF INFORMATION. (a) An agency authorized by this chapter to provide continuity of care for a special needs offender may:

(1) receive information relating to a convicted felon regardless of whether other state law makes that information confidential, if the agency receives the information to further the purposes of this chapter; or

(2) disclose information relating to a convicted felon, including information about the felon's identity, needs, treatment, social, criminal, and vocational history, and medical and mental health history, if the agency discloses the information to further the purposes of this chapter.

(b) This section is not intended to conflict with a federal law that restricts the disclosure of information described by Subsection (a).

SECTION 1.108. Subchapter B, Chapter 101, Civil Practice and Remedies Code, is amended by adding Section 101.029 to read as follows:

Sec. 101.029. LIABILITY FOR CERTAIN CONDUCT OF STATE PRISON INMATES. (a) The Department of Criminal Justice is liable for property damage, personal injury, and death proximately caused by the wrongful act or omission or the negligence of an inmate or state jail defendant housed in a facility operated by the department if:

(1) the property damage, personal injury, or death arises from the operation or use of a motor-driven vehicle or motor-driven equipment;

(2) the inmate or defendant would be personally liable to the claimant according to Texas law; and

(3) the act, omission, or negligence was committed by the inmate or defendant acting in the course and scope of a task or activity that:

(A) the inmate or defendant performed at the request of an employee of the department; and

(B) the inmate or defendant performed under the control or supervision of the department.

(b) This section does not apply to property damage, personal injury, or death sustained by an inmate or state jail defendant.

SECTION 1.109. Section 171.651, Tax Code, is amended to read as follows:

Sec. 171.651. DEFINITIONS. In this subchapter:

(1) "Department" means the Texas Department of Criminal Justice.

(2) "Inmate" means an inmate in a prison industries program operated by the prison industries office of the department ~~[institutional division]~~ under Subchapter A, Chapter 497, Government Code.

~~[(2) "Institutional division" means the institutional division of the Texas Department of Criminal Justice.]~~

SECTION 1.110. Sections 171.653(a) and (b), Tax Code, are amended to read as follows:

(a) The amount of the credit for wages paid by a corporation to an inmate is equal to 10 percent of that portion of the wages paid that the department [~~institutional division~~] apportions to the state under Section 497.004(b)(3), Government Code, as reimbursement for the cost of the inmate's confinement.

(b) A corporation is eligible for the credit under this section only if it receives before the due date of its franchise tax report for the privilege period for which the credit is claimed a written certification from the department [~~institutional division~~] stating the amount of the wages that the corporation paid to an inmate during the privilege period and the amount of those wages that the department [~~institutional division~~] apportioned to the state as reimbursement for the cost of the inmate's confinement.

SECTION 1.111. Sections 171.654(a) and (b), Tax Code, are amended to read as follows:

(a) The amount of the credit for wages paid by a corporation to an employee who was employed by the corporation when the employee was an inmate is equal to 10 percent of that portion of the wages paid that, were the employee still an inmate, the department [~~institutional division~~] would apportion to the state under Section 497.004(b)(3), Government Code, as reimbursement for the cost of the inmate's confinement.

(b) A corporation is eligible for the credit under this section only if:

(1) the employee who was formerly an inmate was continuously employed for not less than six months while an inmate and has been continuously employed by the corporation for at least one year after the date that the employee was released from prison;

(2) the nature of the employment is substantially similar to the employment the employee had with the corporation when the employee was an inmate or the employment requires more skills or provides greater opportunities for the employee;

(3) the corporation has provided the department [~~institutional division~~] a statement of the amount of wages paid the employee during the accounting period on which the credit is computed; and

(4) the corporation receives before the due date of its franchise tax report for the privilege period for which the credit is claimed a written certification from the department [~~institutional division~~] stating the amount of the wages that, were the employee still an inmate, the department [~~institutional division~~] would have apportioned to the state as reimbursement for the cost of the inmate's confinement.

SECTION 1.112. Section 492.012, Government Code, is amended to read as follows:

Sec. 492.012. SUNSET PROVISION. The Texas Board of Criminal Justice and the Texas Department of Criminal Justice are subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board and the department are abolished September 1, 1999 [~~1997~~].

SECTION 1.113. Sections 493.009(o), 494.005, 494.009, 494.010, 494.011 (as added by Chapter 988, Acts of the 73rd Legislature, Regular Session, 1993), 499.006, 499.051, 499.054, 499.072, and 507.006(c), Government Code, are repealed.

SECTION 1.114. (a) The amendment made by this article to Section 501.055, Government Code, does not apply to an offense committed under

Subsection (c) of that section before the effective date of this article. An offense under Subsection (c) of that section committed before the effective date of this article is covered by Section 501.055 as it existed on the date on which the offense was committed, and the former law is continued in effect for that purpose.

(b) The amendments made by this article to Sections 38.01 and 39.05, Penal Code, apply only to offenses committed on or after the effective date of this article. An offense committed before the effective date of this article is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

(c) For purposes of this section, an offense is committed before the effective date of this article if any element of the offense occurs before that date.

SECTION 1.115. The change in law made by this article to Chapter 101, Civil Practice and Remedies Code, applies only to a cause of action that accrues on or after the effective date of this article. An action that accrued before the effective date of this article is governed by the law applicable to the action as it existed immediately before the effective date of this article, and that law is continued in effect for that purpose.

SECTION 1.116. (a) Except as provided by Subsection (b), this article takes effect September 1, 1995.

(b) Sections 1.020 and 1.060 take effect immediately.

ARTICLE 2

SECTION 2.001. Section 2, Article 42.18, Code of Criminal Procedure, is amended by amending Subdivisions (1), (2), (5), and (8) and by adding Subdivision (9) to read as follows:

(1) "Parole" means the discretionary and conditional release of an eligible prisoner sentenced to ~~[from the physical custody of]~~ the institutional division so that the prisoner may ~~[of the Texas Department of Criminal Justice if the prisoner contractually agrees to]~~ serve the remainder of his sentence under the supervision and control of the pardons and paroles division. Parole shall not be construed to mean a commutation of sentence or any other form of executive clemency.

(2) "Mandatory supervision" means the release of an eligible prisoner sentenced to ~~[from the physical custody of]~~ the institutional division so that the prisoner may ~~[but not on parole, to]~~ serve the remainder of his sentence not on parole but under the supervision and control of the pardons and paroles division. Mandatory supervision may not be construed as a commutation of sentence or any other form of executive clemency.

(5) "Director" means the director of the pardons and paroles division.

(8) "Division ~~[Pardons and paroles division]~~" means the pardons and paroles division of the Texas Department of Criminal Justice.

(9) "Department" means the Texas Department of Criminal Justice.

SECTION 2.002. Sections 4(a), (b), (c), (g), and (h), Article 42.18, Code of Criminal Procedure, are amended to read as follows:

(a) Board members must be representative of the general public. A member must be a resident citizen of this state and must have resided in this state for the two years preceding appointment. A person is not eligible for appointment as a public member if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization receiving funds from the department or the board [~~Texas Department of Criminal Justice~~];

(2) owns or controls directly or indirectly more than a 10 percent interest in a business entity or other organization regulated by the department [~~Texas Department of Criminal Justice~~] or receiving funds from the department or the board; or

(3) uses or receives a substantial amount of tangible goods, services, or funds from the department or the board [~~Texas Department of Criminal Justice~~], other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

(b) An employee or paid officer or consultant of a trade association in the field of criminal justice may not be a member of the board or an employee of the [~~pardons and paroles~~] division or the board. A person who is the spouse of any manager or paid consultant of a trade association in the field of criminal justice may not be a member of the board and may not be an employee of the [~~pardons and paroles~~] division or the board, including an employee exempt from the state's classification plan, who is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule. For the purposes of this section, a trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interests.

(c) A person who is required to register as a lobbyist under Chapter 305, Government Code, by virtue of the person's activities for compensation in or on behalf of a profession related to the operation of the board, may not serve as a member of the board or act as the general counsel to the [~~pardons and paroles~~] division.

(g) If the director has knowledge that a potential ground for removal exists, the director shall notify the chairman of the board [~~Texas Board of Criminal Justice~~] of the ground. The chairman of the board [~~Texas Board of Criminal Justice~~] shall then notify the governor that a potential ground for removal exists.

(h) The financial transactions of the [~~pardons and paroles~~] division and the board are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

SECTION 2.003. Section 6(b), Article 42.18, Code of Criminal Procedure, is amended to read as follows:

(b) The executive director of the department [~~Texas Department of Criminal Justice~~] shall hire the director. The director is responsible for the day-to-day administration of the [~~pardons and paroles~~] division.

SECTION 2.004. Section 6, Article 42.18, Code of Criminal Procedure, is amended by adding Subsection (d) to read as follows:

(d) The board, after consultation with the governor and the Texas Board of Criminal Justice, shall adopt a mission statement that reflects those responsibilities for the operation of the parole process that are assigned to the board and those responsibilities for the operation of the parole process that are assigned to the division, the department, or the Texas Board of Criminal Justice.

The board shall include in the mission statement a description of specific locations at which the board intends to conduct business related to the operation of the parole process.

SECTION 2.005. (a) Article 42.18, Code of Criminal Procedure, is amended by adding Section 8B to read as follows:

Sec. 8B. PAROLEE RESTITUTION FUND. (a) The parolee restitution fund is a fund outside the treasury and consists of restitution payments made by persons released on parole or mandatory supervision. Money in the fund may be used only to pay restitution as required by a condition of parole or release to mandatory supervision to victims of criminal offenses.

(b) The state treasurer shall be the trustee of the parolee restitution fund as provided by Section 404.073, Government Code.

(c) When the board orders the payment of restitution in the manner prescribed by Article 42.037(h) from a person released on parole or mandatory supervision, the department shall:

(1) collect the payment for disbursement to the victim;

(2) deposit the payment in the parolee restitution fund; and

(3) transmit the payment to the victim as soon as practicable.

(d) If a victim who is entitled to restitution cannot be located, immediately after receiving a final payment in satisfaction of an order of restitution for the victim, the department shall attempt to notify the victim of that fact by certified mail, mailed to the last known address of the victim. If a victim then makes a claim for payment, the department promptly shall remit the payment to the victim. Money that remains unclaimed shall be transferred to the general revenue fund of the state treasury on the fifth anniversary of the date on which the money was deposited to the credit of the compensation to victims of crime auxiliary fund.

(b) The parole division of the Texas Department of Criminal Justice not later than the 30th day after the effective date of this article shall deposit any restitution money received before the effective date of this article but not paid to a victim in the parolee restitution fund in the manner provided by Section 8B, Article 42.18, Code of Criminal Procedure, as added by this article.

SECTION 2.006. Section 9, Article 42.18, Code of Criminal Procedure, is amended to read as follows:

Sec. 9. DUTY TO PROVIDE INFORMATION, COMPUTERS, AND OFFICES. (a) It shall be the duty of any judge, district attorney, county attorney, police officer, or other public official of the state having information with reference to any prisoner eligible for parole to send in writing such information as may be in his possession or under his control to the department [~~pardons and paroles division~~], upon request of any member of the Board of Pardons and Paroles or employee of the board or the department [~~pardons and paroles division~~].

(b) The department [~~Texas Department of Criminal Justice~~] may, by interagency contract, provide to the board necessary computer equipment and computer access to all computerized records and physical access to all hard copy records in the custody of the department that are related to the duties and functions of the board.

(c) The department [~~Texas Department of Criminal Justice~~] may, by

interagency contract, provide to the board necessary and appropriate office space in the locations designated by the chairman of the board and utilities and communication equipment.

SECTION 2.007. Section 10, Article 42.18, Code of Criminal Procedure, is amended to read as follows:

Sec. 10. ACCESS TO PRISONERS. It shall be the duty of the department [~~institutional division~~] to grant to the members and employees of the board [~~and employees of the board and the pardons and paroles division~~] access at all reasonable times to any prisoner, to provide for the members and employees or such representatives facilities for communicating with and observing such prisoner, and to furnish to the members and employees such reports as the members and employees shall require concerning the conduct and character of any prisoner in their custody and any other facts deemed by a parole panel pertinent in determining whether such prisoner shall be paroled.

SECTION 2.008. Sections 11(a), (c), (d), (e), (f), (g), (i), and (m), Article 42.18, Code of Criminal Procedure, are amended to read as follows:

(a) The board shall adopt rules as to:

(1) the submission and presentation of information and arguments to the board, parole panels, and the department [~~pardons and paroles division~~] for and in behalf of an inmate; and

(2) the time, place, and manner of contact between a person representing an inmate and a member of the board, an employee of the board, or an employee of the department [~~pardons and paroles division~~].

(c) A person required to register under this section shall file a fee affidavit with the department [~~pardons and paroles division~~] in a form prescribed by the department [~~division~~] for each inmate the person represents for compensation before the person first contacts a member of the board, an employee of the board, or an employee of the department [~~pardons and paroles division~~] on behalf of the inmate.

(d) The fee affidavit must be written and verified and contain:

(1) the registrant's full name and address;

(2) the registrant's normal business, business phone number, and business address;

(3) the full name of any former member or employee of the Board of Pardons and Paroles or the Texas Board of Criminal Justice or any former employee of the department [~~Texas Department of Criminal Justice~~] with whom the person:

(A) is associated;

(B) has a relationship as an employer or employee; or

(C) maintains a contractual relationship to provide services;

(4) the full name and institutional identification number of the inmate the registrant represents;

(5) the amount of compensation the person has received or expects to receive in exchange for the representation; and

(6) the name of the person making the compensation.

(e) The department [~~division~~] shall, not later than the third day after the date the fee affidavit is filed, place a copy of the affidavit in the file of an inmate that a parole panel or the board reviews. The department [~~division~~] shall also keep a copy of each fee affidavit in a central location.

(f) If a person who has registered under this section receives compensation in excess of the amount reported on the fee affidavit, the person must file with the department [~~pardons and paroles division~~], not later than the fifth day after the date the person receives the additional compensation, a supplemental fee affidavit in a form prescribed by the department [~~division~~] indicating the total amount of compensation received for representing that inmate. The department [~~division~~] shall follow the procedures in Subsection (e) [~~of this section~~] to process the supplemental affidavit.

(g) A person required to register under this section shall, for each calendar year the person represents an inmate, file a representation summary form with the Texas Ethics Commission on a form prescribed by the commission. The form must be filed not later than the last day of January in the first year following the reporting period and include:

(1) the registrant's full name and address;

(2) the registrant's normal business, business phone number, and business address;

(3) the full name of any former member or employee of the Board of Pardons and Paroles or the Texas Board of Criminal Justice or any former employee of the department [~~Texas Department of Criminal Justice~~] with whom the person:

(A) is associated;

(B) has a relationship as an employer or employee; or

(C) maintains a contractual relationship to provide services;

(4) the full name and institutional identification number of each inmate the registrant represented in the previous calendar year; and

(5) the amount of compensation the person has received for representing each inmate in the previous calendar year.

(i) The Texas Ethics Commission shall submit to the department [~~pardons and paroles division~~] a copy of each representation summary form that is filed.

(m) In this section:

(1) "Compensation" has the meaning assigned by Section 305.002, Government Code.

(2) "Inmate" includes an administrative releasee, a person imprisoned in the institutional division, and a person confined in a transfer facility or county jail awaiting transfer to the institutional division or awaiting a revocation hearing.

(3) "Represent" means to directly or indirectly contact in person or by telephone, facsimile transmission, or correspondence a member or employee of the board or an employee of the department [~~pardons and paroles division~~] on behalf of an inmate.

SECTION 2.009. Section 13(a), Article 42.18, Code of Criminal Procedure, is amended to read as follows:

(a) A warrant for the return of a paroled prisoner, a prisoner released to mandatory supervision, a prisoner released although not eligible for release, a resident released to a preparole or work program, a prisoner released on emergency reprieve or on furlough, or a person released on a conditional pardon to the institution from which the person was paroled, released, or pardoned may be issued by the director or a designated agent of the director in cases of parole

or mandatory supervision, or by the board on order by the governor in other cases, if there is reason to believe that the person has been released although not eligible for release, if the person has been arrested for an offense, if there is a verified complaint stating that the person violated a rule or condition of release, or if there is reliable evidence that the person has exhibited behavior during the person's release that indicates to a reasonable person that the person poses a danger to society that warrants the person's immediate return to custody. The person may be held in custody pending a determination of all facts surrounding the alleged offense, violation of a rule or condition of release, or dangerous behavior. A designated agent of the director acts independently from a parole officer and must receive specialized training as determined by the director. Such warrant shall authorize all officers named therein to take actual custody of the prisoner and detain and house the prisoner until a parole panel orders the return of the prisoner to the institution from which he was released. Pending hearing, as hereinafter provided, upon any charge of parole violation, ineligible release, or violation of the conditions of mandatory supervision, a prisoner returned to custody shall remain incarcerated. If the director, a board member, or a designated agent of the director or the board is otherwise authorized to issue a warrant under this subsection, the ~~[pardons and paroles]~~ division may instead issue to a prisoner a summons requiring the prisoner to appear for a hearing under Section 14 of this article. The summons must state the time, place, date, and purpose of the hearing.

SECTION 2.010. Section 14, Article 42.18, Code of Criminal Procedure, is amended by amending Subsection (a) and by adding Subsection (c) to read as follows:

(a) Whenever a prisoner or a person granted a conditional pardon is accused of a violation of his parole, mandatory supervision, or conditional pardon, on information and complaint by a law enforcement officer or parole officer, or is arrested after an ineligible release, he shall be entitled to be heard on such charges before a parole panel or a designee of the board under such rules as the board may adopt; provided, however, said hearing shall be held within 70 days of the date of arrest under a warrant issued by the director or a designated agent of the director or by the board on order by the governor and at a time and place set by that parole panel or designee. The panel or designee may hold the hearing at a date later than the date otherwise required by this section if it determines a delay is necessary to assure due process for the person, except that the authority issuing the warrant shall immediately withdraw the warrant if the hearing is not held before the 121st day after the date of arrest~~[, regardless of whether the person agrees to delay the hearing until after that date]~~. If a parole panel or designee determines that a parolee, mandatory supervisee, or person granted a conditional pardon has been convicted in a court of competent jurisdiction of a felony offense committed while an administrative releasee and has been sentenced by the court to a term of incarceration in a penal institution, the determination is to be considered a sufficient hearing to revoke the parole or mandatory supervision or recommend to the governor revocation of a conditional pardon without further hearing, except that the parole panel or designee shall conduct a hearing to consider mitigating circumstances if requested by the parolee, mandatory supervisee, or person granted a conditional pardon. When the parole panel or designee has

heard the facts, the board may recommend to the governor that the conditional pardon be continued, revoked, or modified, or it may continue, revoke, or modify the parole or mandatory supervision, in any manner warranted by the evidence. The parole panel or designee must make its recommendation or decision no later than the 30th day after the date the hearing is concluded.

When a person's parole, mandatory supervision, or conditional pardon is revoked, that person may be required to serve the portion remaining of the sentence on which he was released, such portion remaining to be calculated without credit for the time from the date of his release to the date of revocation. When a warrant is issued charging a violation of release conditions, the sentence time credit may be suspended until a determination is made in such case and such suspended time credit may be reinstated should such parole, mandatory supervision, or conditional pardon be continued.

(c) The requirement in Subsection (a) that a warrant be withdrawn does not apply if the person:

(1) has been removed from the custody of a county sheriff by the department and placed in a community residential facility;

(2) is in custody in another state or in a federal correctional facility;

(3) is granted a continuance, not to exceed the 181st day after the arrest, or the attorney representing the person or the attorney representing the state is granted a continuance, not to exceed the 181st day after the arrest; or

(4) is subject to pending criminal charges that have not been adjudicated.

SECTION 2.011. Section 18, Article 42.18, Code of Criminal Procedure, is amended to read as follows:

Sec. 18. ~~CONFIDENTIAL INFORMATION. (a) Except as provided by Subsection (b), all [AH] information, including victim protest letters or other correspondence, victim impact statements, lists of inmates eligible for release on parole, and arrest records of inmates, obtained and maintained in connection with inmates of the institutional division subject to parole, release to mandatory supervision, or executive clemency, or individuals who may be on mandatory supervision or parole and under the supervision of the pardons and paroles division, or persons directly identified in any proposed plan of release for a prisoner, is [including victim impact statements, lists of inmates eligible for parole, and inmates' arrest records, shall be] confidential and privileged [information and shall not be subject to public inspection; provided, however, that all such information shall be available to the governor, the members of the board, and the Criminal Justice Policy Council to perform its duties under Section 413.021, Government Code, upon request].~~

~~(b) Statistical [It is further provided that statistical] and general information respecting the parole and mandatory supervision program and system, including the names of paroled prisoners, prisoners released to mandatory supervision, and data recorded in connection with parole and mandatory supervision services, is not confidential or privileged and must [shall] be made available for [subject to] public inspection at any reasonable time.~~

(c) On request of the governor, a member of the board, the Criminal Justice Policy Council in performing duties of the council under Section 413.021, Government Code, or an eligible entity requesting information for a

law enforcement, prosecutorial, correctional, clemency, or treatment purpose, the department may provide to the person or entity for that purpose information made confidential and privileged by this section.

(d) In this section, "eligible entity" means:

(1) a government agency, including the office of a prosecuting attorney;

(2) an organization with which the Texas Department of Criminal Justice contracts or an organization to which the department provides a grant; or

(3) an organization to which inmates are referred for services by the Texas Department of Criminal Justice.

SECTION 2.012. Section 22, Article 42.18, Code of Criminal Procedure, is amended to read as follows:

Sec. 22. ELECTRONIC MONITORING. In order to establish and maintain electronic monitoring programs as authorized by this article, the department [~~pardons and paroles division~~] may fund electronic monitoring programs in parole offices, develop standards for the operation of electronic monitoring programs in parole offices, and provide funds for the purchase, lease, or maintenance of electronic monitoring equipment. In determining whether electronic monitoring equipment should be leased or purchased, the department [~~pardons and paroles division~~] shall take into consideration the rate at which technological change makes electronic monitoring equipment obsolete.

SECTION 2.013. Section 23, Article 42.18, Code of Criminal Procedure, is amended to read as follows:

Sec. 23. SPECIAL PROGRAMS. (a) The department [~~pardons and paroles division~~], if funds are appropriated to the department [~~division~~] for that purpose, may enter into contracts for the provision of certain services to be provided to releasees under the supervision of the division, including the following:

(1) services to releasees who have a history of mental impairment or mental retardation;

(2) services to releasees who have a history of substance abuse; or

(3) services to releasees who have a history of sexual offenses.

(b) The department [~~pardons and paroles division~~] shall seek funding for the contracts as a priority item.

SECTION 2.014. Section 24, Article 42.18, Code of Criminal Procedure, is amended to read as follows:

Sec. 24. INTENSIVE SUPERVISION. The department [~~pardons and paroles division~~] shall establish a program to provide intensive supervision to inmates released under the provisions of Subchapter B, Chapter 499 [498], Government Code, and other inmates determined by parole panels or the department [~~pardons and paroles division~~] to require intensive supervision. The Texas Board of Criminal Justice shall adopt rules that establish standards for determining which inmates require intensive supervision. The program must provide the highest level of supervision provided by the department [~~pardons and paroles division~~].

SECTION 2.015. Section 25, Article 42.18, Code of Criminal Procedure, is amended to read as follows:

Sec. 25. COMMUNITY RESIDENTIAL [~~COMMUNITY-~~

BASED] FACILITIES. (a) The [~~pardons and paroles~~] division may establish and operate or contract for the operation of community residential [~~community-based intermediate sanction~~] facilities to house, maintain, and provide services for:

(1) persons required by a parole panel as a condition of parole or mandatory supervision under [~~Section 8(g) of~~] this article to serve a period in a community-based facility; and

(2) persons whose release on parole or mandatory supervision has been continued or modified under Section 14(a) of this article, and on whom sanctions have been imposed under that section.

(b) The purpose of a facility authorized by this section is to provide housing, supervision, counseling, personal, social, and work adjustment training, and other programs for persons described by Subsection (a) of this section.

(c) The [~~pardons and paroles~~] division may not establish a community residential [~~community-based~~] facility, enter into a contract for a community residential [~~community-based~~] facility, change the use of a community residential [~~community-based~~] facility, significantly increase the capacity of a community residential [~~community-based~~] facility, or increase the capacity of a community residential [~~community-based~~] facility to more than 500 residents, regardless of whether that increase is significant, unless the division or a vendor proposing to operate the facility [~~pardons and paroles division~~] provides notice of the proposed action and a hearing on the issues in the same manner as notice and hearing are provided [~~required of the community justice assistance division~~] under Section 2 [40], Article 42.13[, of this code before the division takes an action under Section 5 of that article]. This subsection applies to any residential facility that the [~~pardons and paroles~~] division establishes or contracts for under this article, under Subchapter C, Chapter 497, Government Code, or under Subchapter A, Chapter 499, Government Code.

(d) The Texas Board of Criminal Justice shall adopt rules necessary for the management of community residential [~~community-based~~] facilities authorized by this section.

(e) The [~~pardons and paroles~~] division may charge a reasonable fee to a person housed in a facility authorized by this section for the cost of housing, board, and that part of the administrative costs of the facility that may be properly allocable to the person. A fee imposed under this subsection may not exceed the actual costs to the [~~pardons and paroles~~] division for services to the person charged for the services. The [~~pardons and paroles~~] division may not deny placement in a community residential [~~community-based~~] facility to a person because that person is unable to pay a fee authorized by this section.

(f) A parole panel or a designee of the [~~pardons and paroles~~] division may grant a limited release to a person placed in a community residential [~~community-based~~] facility so that the person may maintain or seek employment, education or training courses, or housing after release from the facility.

(g) The [~~pardons and paroles~~] division may enter into a contract with a public or private vendor for the financing, construction, operation, or management of community residential [~~community-based~~] facilities using lease-purchase or installment sale contracts to provide or supplement housing, board,

or supervision for persons placed in community residential ~~[community-based]~~ facilities. A person housed or supervised in a facility operated by a vendor under a contract is subject to the same provisions of law as if the housing or supervision were provided directly by the ~~[pardons and paroles]~~ division.

SECTION 2.016. Section 26, Article 42.18, Code of Criminal Procedure, is amended to read as follows:

Sec. 26. **CONTRACTS FOR LEASE OF FEDERAL FACILITIES.**

(a) The department ~~[pardons and paroles division]~~ may contract with the federal government for the lease of any military base or other federal facility that is not being used by the federal government.

(b) A facility leased under this section may be used by the department ~~[pardons and paroles division]~~ for the purpose of housing releasees in the custody of the ~~[pardons and paroles]~~ division.

(c) The department ~~[pardons and paroles division]~~ may not enter into a contract under this section unless funds have been appropriated specifically for the purpose of making payments on contracts authorized under this section.

(d) The department ~~[pardons and paroles division]~~ shall attempt to enter into contracts authorized by this section that will provide the department ~~[pardons and paroles division]~~ with facilities located in the various parts of the state.

SECTION 2.017. Section 27, Article 42.18, Code of Criminal Procedure, is amended to read as follows:

Sec. 27. **PROGRAM TO ASSESS AND ENHANCE EDUCATIONAL AND VOCATIONAL SKILLS.** (a) The department ~~[pardons and paroles division]~~, with the assistance of public school districts, community and public junior colleges, public and private institutions of higher education, and other appropriate public and private entities, may establish a developmental program on the basis of information developed under Subsection (b)(4), Section 8B, [8(k) of this article] for an inmate to be released to the supervision of the division.

(b) The developmental program may provide the inmate with the educational and vocational training necessary to:

(1) meet the average skill level required under Section 8B ~~[8(k) of this article]~~; and

(2) acquire employment while in the custody ~~[under the supervision]~~ of the ~~[pardons and paroles]~~ division, to lessen the likelihood that the inmate will return to the institutional division.

(c) To decrease state expenditures for the educational and vocational skills assessment and enhancement program established under this section, the Texas Department of Commerce shall provide information to the department ~~[pardons and paroles division]~~, public school districts, community and public junior colleges, public and private institutions of higher education, and other appropriate public and private entities for obtaining financial assistance through Chapter 301, Labor Code, [the Texas Job-Training Partnership Act (Article 4413(52), Vernon's Texas Civil Statutes)] and other applicable programs of public or private entities.

(d) The department ~~[pardons and paroles division]~~ may establish a developmental program similar to the program described by Subsection (a) of this section for inmates released from the institutional division who are not to be supervised by the department ~~[division]~~.

SECTION 2.018. Section 28, Article 42.18, Code of Criminal Procedure, is amended to read as follows:

Sec. 28. REPORTING AND MANAGEMENT SERVICES. The department ~~[pardons and paroles division]~~, with the approval of the Texas Board of Criminal Justice, may enter into a contract with a public or private vendor for the provision of telephone reporting, automated caseload management, and collection services for fines, fees, restitution, and other costs ordered to be paid by a court or fees collected ~~[imposed]~~ by the division.

SECTION 2.019. Article 48.01, Code of Criminal Procedure, is amended to read as follows:

Art. 48.01. GOVERNOR MAY PARDON. In all criminal cases, except treason and impeachment, the Governor shall have power, after conviction, on the written signed recommendation and advice of the Board of Pardons and Paroles, or a majority thereof, to grant reprieves and commutations of punishments and pardons; and upon the written recommendation and advice of a majority of the Board of Pardons and Paroles, he shall have the power to remit fines and forfeitures. The Governor shall have the power to grant one reprieve in any capital case for a period not to exceed 30 days; and he shall have power to revoke ~~[pardons and]~~ conditional pardons. With the advice and consent of the Legislature, the Governor may grant reprieves, commutations of punishment and pardons in cases of treason.

SECTION 2.020. Section 614.002(c), Health and Safety Code, is amended to read as follows:

(c) The executive head of each of the following agencies, divisions of agencies, or associations, or that person's designated representative, shall serve as a member of the council:

(1) the institutional division of the Texas Department of Criminal Justice;

(2) the Texas Department of Mental Health and Mental Retardation;

(3) the pardons and paroles division of the Texas Department of Criminal Justice;

(4) the community justice assistance division of the Texas Department of Criminal Justice;

(5) the state jail division of the Texas Department of Criminal Justice;

(6) the Texas Juvenile Probation Commission;

(7) ~~[(6)]~~ the Texas Youth Commission;

(8) ~~[(7)]~~ the Texas Rehabilitation Commission;

(9) ~~[(8)]~~ the Central Education Agency;

(10) ~~[(9)]~~ the Criminal Justice Policy Council;

(11) ~~[(10)]~~ the Mental Health Association in Texas;

(12) ~~[(11)]~~ the Texas Commission on Alcohol and Drug Abuse;

(13) ~~[(12)]~~ the Commission on Law Enforcement Officer Standards and Education;

(14) ~~[(13)]~~ the Texas Council of Community Mental Health and Mental Retardation Centers;

(15) ~~[(14)]~~ the Commission on Jail Standards;

(16) ~~[(15)]~~ the Texas Planning Council for Developmental Disabilities;

(17) ~~[(16)]~~ the Texas Association for Retarded Citizens;

- (18) [(17)] the Texas Alliance for the Mentally Ill;
(19) [(18)] the Parent Association for the Retarded of Texas, Inc.;
(20) [(19)] the Texas Department of Human Services; and
(21) [(20)] the Texas Department on Aging.

SECTION 2.021. Section 3(b), Chapter 462, Acts of the 68th Legislature, Regular Session, 1983 (Article 4413(51), Vernon's Texas Civil Statutes), is amended to read as follows:

(b) An interagency advisory committee may advise the council on administering its duties under this Act. The interagency advisory committee is composed of 11 members. The executive head of each of the following agencies or the designated representative of the executive head shall serve as a member of the interagency advisory committee: the ~~[institutional division of the]~~ Texas Department of Criminal Justice, ~~[pardons and paroles division of the Texas Department of Criminal Justice, community justice assistance division of the Texas Department of Criminal Justice,]~~ Texas Juvenile Probation Commission, Texas Department of Mental Health and Mental Retardation, Texas Youth Commission, Sam Houston State University, Department of Protective and Regulatory Services, Texas Council of Community Mental Health and Mental Retardation Centers, and Texas Department of Health. The director of the Criminal Justice Division of the Governor's Office or the designated representative of the director shall serve as a member of the interagency advisory committee.

SECTION 2.022. Section 5, Article 42.18, Code of Criminal Procedure, is amended to read as follows:

Sec. 5. SUNSET PROVISIONS. The Board of Pardons and Paroles is subject to review under Chapter 325, Government Code (Texas Sunset Act), but is not abolished under that chapter. The board shall be reviewed in a timely manner to permit recommendations for necessary legislation to be made to the 75th Legislature, Regular Session, 1997 ~~[during the period in which the Texas Department of Criminal Justice is reviewed]~~.

SECTION 2.023. This article takes effect September 1, 1995.

ARTICLE 3

SECTION 3.001. Sections 8(a), (b), (c), (d), (f), (h), and (i), Article 42.09, Code of Criminal Procedure, are amended to read as follows:

(a) A county that transfers a defendant to the ~~[institutional division of the]~~ Texas Department of Criminal Justice under this article shall deliver to an officer designated by the department ~~[the director of the division]~~:

(1) a copy of the judgment entered pursuant to Article 42.01 of this code, completed on a standardized felony judgment form described by Section 4 of that article;

(2) a copy of any order revoking community supervision ~~[probation]~~ and imposing sentence pursuant to Section 23, Article 42.12, of this code, including:

(A) any amounts owed for restitution, fines, and court costs, completed on a standardized felony judgment form described by Section 4, Article 42.01, of this code; and

(B) a copy of the client supervision plan prepared for the defendant by the community supervision and corrections department supervising the defendant, if such a plan was prepared;

(3) a written report that states the nature and the seriousness of each offense and that states the citation to the provision or provisions of the Penal Code or other law under which the defendant was convicted;

(4) a copy of the victim impact statement, if one has been prepared in the case under Article 56.03 of this code;

(5) a statement as to whether there was a change in venue in the case and, if so, the names of the county prosecuting the offense and the county in which the case was tried;

(6) a copy of the record of arrest for each offense;

(7) if requested, information regarding the criminal history of the defendant, including the defendant's state identification number if the number has been issued;

(8) a copy of the indictment or information for each offense;

(9) a checklist sent by the department to the county and completed by the county in a manner indicating that the documents required by this subsection and Subsection (c) of this section accompany the defendant; and

(10) a copy of a presentence or postsentence investigation report prepared under Section 9, Article 42.12 of this code.

(b) The ~~[institutional division of the]~~ Texas Department of Criminal Justice shall not take a defendant into custody under this article until the designated officer ~~[director]~~ receives the documents required by Subsections (a) and (c) of this section. The designated officer ~~[director]~~ shall certify under the seal of the department ~~[institutional division]~~ the documents received under Subsections (a) and (c) of this section. A document certified under this subsection is self-authenticated for the purposes of Rules 901 and 902, Texas Rules of Criminal Evidence.

(c) A county that transfers a defendant to the ~~[institutional division of the]~~ Texas Department of Criminal Justice under this article shall also deliver to the designated officer ~~[director of the division]~~ any presentence or postsentence investigation report, revocation report, psychological or psychiatric evaluation of the defendant, and available social or psychological background information relating to the defendant and may deliver to the designated officer ~~[director]~~ any additional information upon which the judge or jury bases the punishment decision.

(d) The institutional division of the Texas Department of Criminal Justice shall make documents received under Subsections (a) and (c) of this section available to the pardons and paroles division on the request of the pardons and paroles division.

(f) Except as provided by Subsection (g) of this section, the county sheriff is responsible for ensuring that documents and information required by this section accompany defendants sentenced by district courts in the county to ~~[terms of imprisonment in the institutional division of]~~ the Texas Department of Criminal Justice.

(h) If a parole panel releases on parole a person who is confined in a jail in this state, a federal correctional institution, or a correctional institution in another state, the ~~[pardons and paroles division of the]~~ Texas Department of Criminal Justice shall request the sheriff who would otherwise be required to transfer the person to the department ~~[institutional division]~~ to forward to the

department [~~both divisions~~] the information described by Subsections (a) and (c) of this section. The sheriff shall comply with the request of the department [~~pardons and paroles division~~]. The department [~~pardons and paroles division~~] shall determine whether the information forwarded by the sheriff under this subsection contains a thumbprint taken from the person in the manner provided by Article 38.33 of this code and, if not, the department [~~division~~] shall obtain a thumbprint taken in the manner provided by that article and shall forward the thumbprint to the department [~~institutional division~~] for inclusion with the information sent by the sheriff.

(i) A county may deliver the documents required under Subsections (a) and (c) of this section to the [~~institutional division of the~~] Texas Department of Criminal Justice by electronic means. For purposes of this subsection, "electronic means" means the transmission of data between word processors, data processors, or similar automated information equipment over dedicated cables, commercial lines, or other similar methods of transmission.

SECTION 3.002. (a) Section 1, Article 42.11, Code of Criminal Procedure, is amended to read as follows:

Sec. 1. This Act may be cited as the Uniform Act for out-of-State probationer and parolee supervision.

(b) The article heading of Article 42.11, Code of Criminal Procedure, is amended to read as follows:

Art. 42.11. UNIFORM ACT FOR OUT-OF-STATE PROBATIONER AND PAROLEE SUPERVISION

SECTION 3.003. Sections 9(e), (j), and (k), Article 42.12, Code of Criminal Procedure, are amended to read as follows:

(e) The judge shall allow the defendant or his attorney to comment on a presentence investigation or a postsentence [~~the~~] report and, with the approval of the judge, introduce testimony or other information alleging a factual inaccuracy in the investigation or report.

(j) The judge by order may direct that any information and records that are not privileged and that are relevant to a [~~the~~] report required by Subsection (a) or Subsection (k) of this section be released to an [~~the~~] officer conducting a [~~the~~] presentence investigation under Subsection (i) of this section or a postsentence report under Subsection (k) of this section. The judge may also issue a subpoena to obtain that information. A [~~The~~] report and all information obtained in connection with a [~~the~~] presentence investigation or postsentence report are confidential and may be released only to those persons and under those circumstances authorized under Subsections (d), (e), (f), (h), and (k) [~~and (g)~~] of this section and as directed by the judge for the effective supervision of the defendant. Medical and psychiatric records obtained by court order shall be kept separate from the defendant's community supervision file and may be released only by order of the judge.

(k) If a presentence report in a felony case is not required under this section, the judge shall direct the officer to prepare a postsentence report containing the same information that would have been required for the presentence report, other than a proposed client supervision plan and any information that is reflected in the judgment. The officer shall send the postsentence report to the clerk of the court not later than the 30th day after

the date on which sentence is pronounced or deferred adjudication is granted, and the clerk shall ~~deliver [file]~~ the postsentence report with the papers in the case to a designated officer of the Texas Department of Criminal Justice, as required by Section 8(a), Article 42.09.

SECTION 3.004. Section 14(a), Article 42.12, Code of Criminal Procedure, as amended by Chapter 900, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

(a) If a court places a defendant on community supervision under any provision of this article as an alternative to imprisonment, the judge may require as a condition of community supervision that the defendant serve a term of confinement and treatment in a substance abuse treatment facility operated by the Texas Department of Criminal Justice under Section 493.009, Government Code. A term of confinement and treatment imposed under this section must be an indeterminate term of not more than one year or less than 90 days [six months].

SECTION 3.005. Section 14(b), Article 42.12, Code of Criminal Procedure, as amended by Chapter 900, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

(b) A judge may impose the condition of community supervision created under this section if:

(1) the judge places the defendant on community supervision under this article;

(2) the defendant is charged with or convicted of a felony other than:
(A) a felony under Section 21.11, 22.011, or 22.021, [or 25.06;] Penal Code; or
(B) criminal attempt of a felony under Section 21.11, 22.011, or 22.021, Penal Code; and

(3) the judge makes an affirmative finding that:

(A) drug or alcohol abuse significantly contributed to the commission of the crime or violation of community supervision; and

(B) the defendant is a suitable candidate for treatment, as determined by the suitability criteria established by the Texas Board of Criminal Justice under Section 493.009(b), Government Code.

SECTION 3.006. Section 15(h), Article 42.12, Code of Criminal Procedure, as amended by Chapter 900, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

(h)(1) A defendant confined in a state jail felony facility after revocation of community supervision does not earn good conduct time for time served in the facility.

(2) A judge may credit against any time a defendant is subsequently required to serve in a state jail felony facility after revocation of community supervision time served by the defendant in county jail:

(A) from the time of the defendant's arrest and confinement until sentencing by the trial court; and

(B) as a condition of community supervision under Subsection (d) of this section[~~;~~ and
~~[(C) after modification of community supervision].~~

(3) A judge shall credit against any time a defendant is subsequently required to serve in a state jail felony facility after revocation of community

supervision any time served by the defendant in a state jail felony facility after sentencing.

SECTION 3.007. Section 16, Article 42.12, Code of Criminal Procedure, is amended to read as follows:

Sec. 16. COMMUNITY SERVICE. (a) A judge shall require as a condition of community supervision, that the defendant work a specified number of hours at a community service project or projects for an organization or organizations approved by the judge and designated by the department, unless the judge determines and notes on the order placing the defendant on community supervision that:

(1) the defendant is physically or mentally incapable of participating in the project;

(2) participating in the project will work a hardship on the defendant or the defendant's dependents;

(3) the defendant is to be confined in a substance abuse punishment facility as a condition of community supervision; or

(4) there is other good cause shown.

(b) The amount of community service work ordered by the judge:

(1) may not exceed 1,000 hours and may not be less than 320 hours for an offense classified as a first degree felony;

(2) may not exceed 800 hours and may not be less than 240 hours for an offense classified as a second degree felony;

(3) may not exceed 600 hours and may not be less than 160 hours for an offense classified as a third degree felony;

(4) may not exceed 400 hours and may not be less than 120 hours for an offense classified as a state jail felony;

(5) may not exceed 200 hours and may not be less than 80 hours for an offense classified as a Class A misdemeanor or for any other misdemeanor for which the maximum permissible confinement, if any, exceeds six months or the maximum permissible fine, if any, exceeds \$4,000; and

(6) may not exceed 100 hours and may not be less than 24 hours for an offense classified as a Class B misdemeanor or for any other misdemeanor for which the maximum permissible confinement, if any, does not exceed six months and the maximum permissible fine, if any, does not exceed \$4,000.

~~(c) [If the judge modifies the defendant's terms of community supervision to include confinement in a state jail felony facility, the judge shall order the defendant to continue to work towards fulfillment of his work requirement during his period of confinement.]~~

~~[(d)]~~ A defendant required to perform community service under this section is not a state employee for the purposes of Article 8309g or 8309h, Revised Statutes.

~~[(e) An employee of the Texas Department of Criminal Justice, sheriff, employee of a sheriff's department, county commissioner, county employee, county judge, employee of a community corrections and supervision department, restitution center, or officer or employee of a political subdivision other than a county is not liable for damages arising from an act or failure to act in connection with community service performed by an inmate pursuant to court order under this article or in connection with an inmate or offender~~

~~programmatic or nonprogrammatic activity, including work, educational, and treatment activities, if the act or failure to act was not intentional, wilfully or wantonly negligent, or performed with conscious indifference or reckless disregard for the safety of others.]~~

(d) [(e)] If the court makes an affirmative finding under Article 42.014, Code of Criminal Procedure, the court may order the defendant to perform community service under this section at a project designated by the court that primarily serves the person or group who was the target of the defendant. If the court orders community service under this subsection the court shall order the defendant to perform not less than:

- (1) 100 hours of service if the offense is a misdemeanor; or
- (2) 300 hours of service if the offense is a felony.

SECTION 3.008. Section 22(a), Article 42.12, Code of Criminal Procedure, is amended to read as follows:

(a) If after a hearing under Section 21 of this article a judge continues or modifies community supervision after determining that the defendant violated a condition of community supervision, the judge may impose any other conditions the judge determines are appropriate, including:

(1) a requirement that the defendant perform community service for a number of hours specified by the court under Section 16 of this article, or an increase in the number of hours that the defendant has previously been required to perform under those sections in an amount not to exceed double the number of hours permitted by Section 16;

(2) an increase in the period of community supervision, in the manner described by Subsection (b) of this section;

(3) an increase in the defendant's fine, in the manner described by Subsection (d) of this section; or

(4) the placement of the defendant in a substance abuse felony punishment program operated under Section 493.009, Government Code, if:

(A) the defendant is convicted of a felony other than:

(i) a felony under Section 21.11, 22.011, or 22.021, [or 25.06,] Penal Code; or

(ii) criminal attempt of a felony under Section 21.11, 22.011, or 22.021, Penal Code; and

(B) the judge makes an affirmative finding that:

(i) drug or alcohol abuse significantly contributed to the commission of the crime or violation of community supervision; and

(ii) the defendant is a suitable candidate for treatment, as determined by the suitability criteria established by the Texas Board of Criminal Justice under Section 493.009(b), Government Code.

SECTION 3.009. Section 1(b)(2), Article 42.13, Code of Criminal Procedure, is amended to read as follows:

(2) "Community corrections facility" means a physical structure, established by a judicial district after authorization of the establishment of the structure has been included in the local community justice plan, that is operated by a department or operated for a department by an entity under contract with the department, for the purpose of confining persons placed on community supervision and providing services and programs to modify criminal behavior,

deter criminal activity, protect the public, and restore victims of crime. The term includes:

- (A) a restitution center;
- (B) a court residential treatment facility;
- (C) a substance abuse treatment facility;
- (D) a custody facility or boot camp;
- (E) a facility for an offender with a mental impairment, as defined by Section 614.001, Health and Safety Code; and
- (F) an intermediate sanction facility~~;~~and
- ~~[(G) a state jail felony facility].~~

SECTION 3.0091. Section 2, Article 42.13, Code of Criminal Procedure, is amended by amending Subsections (a) and (c) and by adding Subsection (d) to read as follows:

(a) The division shall propose and the board shall adopt reasonable rules establishing:

(1) minimum standards for programs, community corrections facilities and other facilities, equipment, and other aspects of the operation of departments;

(2) a list and description of core services that should be provided by each department;

(3) methods for measuring the success of community supervision and corrections programs, including methods for measuring rates of diversion, program completion, and recidivism; ~~and~~

(4) a format for community justice plans; and

(5) minimum standards for the operation of substance abuse facilities and programs funded through the division.

(c) ~~[After consultation with the Texas Commission on Alcohol and Drug Abuse, the division by rule shall establish standards for the operation of substance abuse facilities and programs by the division and by departments.]~~ A substance abuse facility or program operating under the standards is not required to be licensed or otherwise approved by any other state or local agency.

(d) The division shall develop a screening and assessment procedure for use in accordance with Section 14, Article 42.131 of this code. The division shall determine if a single screening and assessment procedure may be used in each program. If the division determines that a single procedure is not feasible, the division shall identify and approve procedures that may be used.

SECTION 3.010. Section 4, Article 42.13, Code of Criminal Procedure, is amended to read as follows:

Sec. 4. INSPECTIONS; AUDITS; EVALUATIONS. ~~[(a)]~~ The division may inspect and evaluate a department or conduct audits of case management records, financial records, and officer certification and training records of a department at any reasonable time to determine compliance with the division's rules and standards.

~~[(b) The division shall authorize payments under Section 10(a)(1) of this article only if the division determines that the department has made a reasonable effort to maintain workloads established by the division for supervising officers that do not exceed the following ratios:~~

~~[(1) one officer or full-time equivalent per 25 cases, with a workload unit value of 4 per case;~~

~~[(2) one officer or full-time equivalent per 40 cases, with a workload unit value of 2.5 per case;~~

~~[(3) one officer or full-time equivalent per 75 cases, with a workload unit value of 1.33 per case; and~~

~~[(4) one officer or full-time equivalent per 100 cases, with a workload unit value of 1 per case.]~~

SECTION 3.011. Section 7(g), Article 42.13, Code of Criminal Procedure, is amended to read as follows:

(g) The division may deny, revoke, or suspend a certification or may reprimand an officer for a violation of a standard adopted under this article ~~[or a rule of the Texas Board of Criminal Justice]~~.

SECTION 3.012. Section 10, Article 42.13, Code of Criminal Procedure, is amended by amending Subsections (a) and (b) and by adding Subsection (f) to read as follows:

(a) If the division determines that a department complies with division standards and if the department or judges managing the department have submitted a community justice plan under Section 3, Article 42.131 of this code and the supporting information required by the division and the division determines the plan and supporting information are acceptable, the division shall prepare and submit to the comptroller of public accounts vouchers for payment to the department as follows:

(1) for per capita funding, a per diem amount for each felony defendant directly supervised by the department pursuant to lawful authority;

(2) for per capita funding, a per diem amount for a period not to exceed 182 days for each defendant supervised by the department pursuant to lawful authority, other than a felony defendant; and

(3) for formula funding, an annual amount as computed by multiplying a percentage determined by the allocation formula established under Subsection (f) ~~[Section 499.071(b), Government Code]~~, times the total amount provided in the General Appropriations Act for payments under this subdivision.

(b) The division may use discretionary grant funds to further the purposes of this chapter by contracting for services with state agencies or nonprofit organizations. The division may also make discretionary grants to departments, municipalities, or counties for the following purposes:

(1) development and operation of pretrial and presentencing services;

(2) electronic monitoring services, surveillance supervision programs, and controlled substances testing services;

(3) research projects to evaluate the effectiveness of community corrections programs, if the research is conducted in cooperation with the Criminal Justice Policy Council;

(4) contract services for felony defendants;

(5) residential services for misdemeanor defendants who exhibit levels of risk or needs indicating a need for confinement and treatment, as described by Section 4(b) of this article;

(6) establishment or operation of county correctional centers under Subchapter H, Chapter 351, Local Government Code, or community corrections

facilities for which the division has established standards under Section 5 of this article; ~~[and]~~

(7) development and operation of treatment alternative to incarceration programs under Section 14, Article 42.131 of this code; and

(8) other purposes determined appropriate by the division and approved by the board.

(f) The division annually shall compute for each department for community corrections program formula funding a percentage determined by assigning equal weights to the percentage of the state's population residing in the counties served by the department and the department's percentage of all felony defendants in the state under direct community supervision. The division shall use the most recent information available in making computations under this subsection. The board by rule may adopt a policy limiting for all departments the percentage of benefit or loss that may be realized as a result of the operation of the formula.

SECTION 3.013. Section 11(b), Article 42.13, Code of Criminal Procedure, is amended to read as follows:

(b) The board shall provide for notice and a hearing in cases in which the division proposes to take an action authorized by this section, other than a refusal by the division to provide discretionary grant funding or a reduction by the division of discretionary grant funding during a funding cycle. The division shall define with specificity the conduct that constitutes substantial noncompliance with division standards and shall establish the procedures to be used in imposing or waiving a sanction authorized by this section, subject to approval of the definition and the procedures by adoption by the board.

SECTION 3.014. Section 12, Article 42.131, Code of Criminal Procedure, as amended by Chapter 988, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

Sec. 12. RESTITUTION. (a) If a judge requires a defendant to make restitution to a victim of the defendant's offense, and a payment is received under this article from the defendant for transmittal to a victim of the offense, the community supervision and corrections department that receives the payment for disbursement to the victim shall immediately deposit the payment in an interest-bearing account in the county treasury as required by Section 140.003(f), Local Government Code [department having original jurisdiction]. The department shall transmit the payment to the victim as soon as practicable.

(b) If a victim cannot be located for receipt of, ~~immediately after receiving~~ a ~~[final]~~ payment in satisfaction of an order of restitution, ~~[for the victim]~~ the department shall attempt to notify the victim of that fact by certified mail, mailed to the last known address of the victim. If a victim then makes a claim for payment, the department promptly shall remit the payment to the victim. A department is obligated to make a good faith effort to locate and notify a victim that an unclaimed payment exists. The department satisfies the good faith requirement under this subsection by sending to the victim by certified mail on any one occasion during the period the defendant is required to make payments a notice that the victim is entitled to an unclaimed payment. Not earlier than the fifth anniversary of the date on which the department mails notice under this subsection, if the victim has not made a claim for payment,

the department shall transfer the payment from the interest-bearing account to the comptroller of public accounts, after deducting five percent of the payment as a collection fee and deducting any interest accrued on the payment. The comptroller shall deposit the payment in the state treasury to the credit of the compensation to victims of crime auxiliary fund.

(c) The collection fee under Subsection (b) of this section and the accrued interest under Subsections (a) and (b) of this section shall be deposited in the special fund of the county treasury provided by Section 10, Article 42.13, of this code to be used for the same purposes for which state aid may be used under that section. The department has a maximum of 121 days after the five-year ~~[four-year]~~ expiration date to transfer the funds to the comptroller's office. Failure to comply with the 121-day deadline will result in a five percent collection fee penalty calculated from the total deposit and all interest attributable to the unclaimed funds.

(d) If the victim of the offense claims the payment during the five-year ~~[four-year]~~ period in which the payment is held in the interest-bearing account, the department shall pay the victim the amount of the original payment, less any interest earned while holding the payment. After the payment has been transferred to the comptroller, the department has no liability in regard to the payment, and any claim for the payment must be made to the comptroller. If the victim makes a claim to the comptroller, the comptroller shall pay the victim the amount of the original payment, less the collection fee, from the compensation to victims of crime auxiliary fund.

SECTION 3.015. Article 43.10, Code of Criminal Procedure, as amended by Section 3, Chapter 578, and Section 5.04, Chapter 900, Acts of the 73rd Legislature, Regular Session, 1993, is amended and reenacted to read as follows:

Art. 43.10. MANUAL LABOR. ~~[(a)]~~ Where the punishment assessed in a conviction for misdemeanor is confinement in jail for more than one day, or where in such conviction the punishment is assessed only at a pecuniary fine and the party so convicted is unable to pay the fine and costs adjudged against him, ~~[or where the party convicted is required to serve a period of confinement as a condition of community supervision,]~~ or where the party is sentenced to jail for a felony or is confined in jail after conviction of a felony, the party convicted ~~[or required to serve the period of confinement]~~ shall be required to work in the county jail industries program or shall be required to do manual labor in accordance with the provisions of this article under the following rules and regulations:

1. Each commissioners court may provide for the erection of a workhouse and the establishment of a county farm in connection therewith for the purpose of utilizing the labor of said parties so convicted ~~[or required to serve a period of confinement]~~;

2. Such farms and workhouses shall be under the control and management of the sheriff, and the sheriff may adopt such rules and regulations not inconsistent with the rules and regulations of the Commission on Jail Standards and with the laws as the sheriff deems necessary;

3. Such overseers and guards may be employed by the sheriff under the authority of the commissioners court as may be necessary to prevent escapes

and to enforce such labor, and they shall be paid out of the county treasury such compensation as the commissioners court may prescribe;

4. They shall be put to labor upon public works and maintenance projects, including public works and maintenance projects for a political subdivision located in whole or in part in the county;

5. One who from age, disease, or other physical or mental disability is unable to do manual labor shall not be required to work. His inability to do manual labor may be determined by a physician appointed for that purpose by the county judge or the commissioners court, who shall be paid for such service such compensation as said court may allow; and

6. For each day of manual labor, in addition to any other credits allowed by law, a defendant is entitled to have one day deducted from each sentence ~~[or period of confinement]~~ he is serving. The deduction authorized by this article, when combined with the deduction required by Article 42.10 of this code, may not exceed two-thirds (2/3) of the sentence ~~[or period of confinement]~~.

~~[(b) A sheriff, employee of a sheriff's department, county commissioner, county employee, county judge, and employee of a community corrections and supervision department, restitution center, or officer or employee of a political subdivision other than a county is not liable for damages arising from an act or failure to act in connection with manual labor performed by an inmate pursuant to this article if the act or failure to act:~~

~~[(1) was performed pursuant to court-ordered confinement; and~~

~~[(2) was not intentional, wilfully or wantonly negligent, or performed with conscious indifference or reckless disregard for the safety of others.]~~

SECTION 3.0151. Article 42.131, Code of Criminal Procedure, is amended by adding Section 14 to read as follows:

Sec. 14. TREATMENT ALTERNATIVE TO INCARCERATION PROGRAM. (a) A department may establish a treatment alternative to incarceration program in each county served by the department according to standards adopted by the division. A department may enter into an interlocal cooperation agreement with one or more other departments in order to establish this program on a regional basis.

(b) The program must:

(1) include automatic screening and assessment of a person arrested for an offense, other than a Class C misdemeanor, in which an element of the offense is the use or possession of alcohol or the use, possession, or sale of a controlled substance or marijuana;

(2) include automatic screening and assessment of a person arrested for an offense, other than a Class C misdemeanor, in which the use of alcohol or drugs is suspected to have significantly contributed to the offense for which the individual has been arrested;

(3) coordinate the screening, assessment, and referral to treatment services; and

(4) make referrals for the appropriate treatment of a person determined to be in need of treatment.

(c) A program administered under this section must use a screening and assessment procedure developed or approved by the division.

(d) After a person is screened and assessed, a representative of the department shall meet with the participating criminal justice and treatment agencies to review the person's case and to determine if the person should be referred for treatment. If a person is considered appropriate for referral, the person may be referred to community-based treatment in accordance with applicable law or any other treatment program deemed appropriate. A magistrate may order a person to participate in a treatment program recommended under this section as a condition of bond or condition of pretrial release.

(e) A department may contract for the provision of treatment services. The department may pay for services only if other adequate public or private sources of payment are not available. A person shall be responsible for the payment of any treatment programs recommended under this section if it is determined that a person referred for treatment is able to pay for the costs of treatment or if the person has insurance that will pay for the treatment. If a person is able to pay for treatment or if the person has insurance that will pay for the treatment, the payment may be made a condition for receiving treatment.

(f) An employee of a department or treatment provider either administering this program or providing services under this section may exchange or otherwise disclose information regarding the assessment, evaluation or treatment of a person participating in this program to:

- (1) another employee of the department;
- (2) an officer in the court that has jurisdiction over the person's case;
- (3) a county sheriff or jail administrator;
- (4) an employee of the Texas Department of Criminal Justice; or
- (5) any employee in a facility, institution, or half-way house in which a person may be confined in accordance with a disposition of the criminal charges in the case.

SECTION 3.016. Section 217.001, Labor Code, is amended by adding Subdivision (4) to read as follows:

- (4) "State jail division" means the state jail division of the department.

SECTION 3.017. Section 217.002, Labor Code, is amended to read as follows:

Sec. 217.002. PROJECT RIO. The project for reintegration of offenders is a statewide employment referral program designed to reintegrate into the labor force persons sentenced to a state jail felony facility or [formerly confined in] the institutional division.

SECTION 3.018. Section 217.005(a), Labor Code, is amended to read as follows:

- (a) The memorandum of understanding must establish the role of:
- (1) the institutional division and the state jail division in ascertaining and encouraging an inmate's chances for employment by:
 - (A) providing vocational and educational assessment for the person while incarcerated [in the division];
 - (B) developing a skills enhancement program for the person while incarcerated, in cooperation with other governmental, educational, and private entities, using available public or private financial resources authorized by statute; and

(C) referring the person on release to the project through the person's parole officer or supervision officer;

(2) the community justice assistance division and the pardons and paroles division of the department in:

(A) encouraging and referring persons to the project; and

(B) ensuring that those persons participate in the project and avail themselves of its services; and

(3) the commission in developing and maintaining a statewide network for finding positions of employment that require the skills possessed by project participants and in helping those participants to secure employment.

SECTION 3.019. Section 414.010, Government Code, is amended to read as follows:

Sec. 414.010. PAYMENT FROM DEFENDANT ON COMMUNITY SUPERVISION. A local crime stoppers program that receives a payment from a defendant [~~probationer~~] under Section 11(a) [~~6(h)~~], Article 42.12, Code of Criminal Procedure, may not use the payment for any purpose other than the payment of a reward to a person who reports information concerning criminal activity. Not later than January 15 of each year, a local crime stoppers program that receives or expends money under this section shall file a detailed report with the Texas Department of Criminal Justice [~~Adult Probation Commission~~] that accounts for all money received and expended under this section during the preceding year.

SECTION 3.020. (a) Section 13(e), Article 42.12, Code of Criminal Procedure, is repealed.

(b) Section 2.09(c), Article 42.121, Code of Criminal Procedure, is repealed.

(c) Section 3.111, Article 42.121, Code of Criminal Procedure, is repealed.

(d) Section 461.017, Health and Safety Code, is repealed.

SECTION 3.021. This article takes effect September 1, 1995.

ARTICLE 4

SECTION 4.001. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

HB 2245 - WITH SENATE AMENDMENT

Representative Black called up with a senate amendment for consideration at this time,

HB 2245, A bill to be entitled An Act relating to the continuation and functions of the Texas Animal Health Commission; providing administrative and criminal penalties.

On motion of Representative Black, the house concurred in the senate amendment to **HB 2245**.

HB 2245 - TEXT OF SENATE AMENDMENT**Senate Amendment No. 1**

Amend **HB 2245** as follows:

(1) On page 16, line 24, following "penalty.", add the following new language "The amount of the penalty shall not be based on a per head basis."

HB 2278 - WITH SENATE AMENDMENT

Representative Hightower called up with a senate amendment for consideration at this time,

HB 2278, A bill to be entitled An Act relating to the transfer of certain facilities from the Texas Department of Criminal Justice to other state agencies.

On motion of Representative Hightower, the house concurred in the senate amendment to **HB 2278** by (Record 466): 137 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carona; Carter; Chisum; Clemons; Combs; Conley; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davis; De La Garza; Dear; Delisi; Denny; Driver; Duncan; Dutton; Edwards; Eiland; Elkins; Farrar; Finnell; Gallego; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Ogden; Oliveira; Park; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Saunders; Seidlits; Serna; Shields; Smithee; Solis; Solomons; Stiles; Swinford; Talton; Telford; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williamson; Willis; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Staples.

Absent — Allen; Coleman; Davila; Dukes; Ehrhardt; Hudson; Sadler; Siebert; Thompson; Wilson; Zbranek.

HB 2278 - TEXT OF SENATE AMENDMENT

CSHB 2278, A bill to be entitled An Act relating to the transfer of certain facilities between state agencies.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 496, Government Code, is amended by adding Section 496.0031 to read as follows:

Sec. 496.0031. **TRANSFER OF FACILITIES.** (a) The department may transfer a correctional facility to another agency of the state, and the agency

receiving the facilities subsequently may transfer the facility back to the department.

(b) A transfer under this section requires the agreement of the board and the governing body of the agency receiving the correctional facility or returning the correctional facility to the department, both as to the identity of the facility to be transferred and to the method of transfer.

(c) In this section, "transfer" means to convey title to, lease, or otherwise convey the beneficial use of a correctional facility and land appurtenant to the facility.

SECTION 2. Subchapter A, Chapter 551, Health and Safety Code, is amended by adding Section 551.008 to read as follows:

Sec. 551.008. TRANSFER OF FACILITIES. (a) The department may transfer the South Campus of the Vernon State Hospital to the Texas Youth Commission contingent upon the agreement of the governing board of the department and the governing board of the Texas Youth Commission.

(b) In this section, "transfer" means to convey title to, lease, or otherwise convey the beneficial use of facilities, equipment and land appurtenant to the facilities.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

HB 2459 - WITH SENATE AMENDMENTS

Representative Marchant called up with senate amendments for consideration at this time,

HB 2459, A bill to be entitled An Act relating to public funds investment.

On motion of Representative Marchant, the house concurred in the senate amendments to **HB 2459**.

HB 2459 - TEXT OF SENATE AMENDMENTS

CSHB 2459, A bill to entitled An Act relating to public funds investment.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 2256, Government Code, is amended to conform to Section 1, Chapter 181, Section 1, Chapter 858, and Section 1, Chapter 946, Acts of the 73rd Legislature, Regular Session, 1993, and amended to read as follows:

CHAPTER 2256. PUBLIC FUNDS INVESTMENT SUBCHAPTER A. AUTHORIZED INVESTMENTS FOR GOVERNMENTAL ENTITIES

Sec. 2256.001. SHORT TITLE. This chapter [subchapter] may be cited as the Public Funds Investment Act.

Sec. 2256.002. DEFINITIONS. In this chapter [subchapter]:

(1) "Bond proceeds" means the proceeds from the sale of bonds, notes,

and other obligations issued by an entity, and reserves and funds maintained by an entity for debt service purposes.

(2) "Book value" means the face or par value of an investment plus accrued interest or minus amortization or accretion.

(3) "Funds" means public funds in the custody of a state agency or local government that:

(A) are not required by law to be deposited in the state treasury; and

(B) the investing entity has authority to invest.

(4) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(5) "Investing entity" and "entity" mean an entity subject to this chapter and described by Section 2256.003.

(6) "Investment pool" means an entity created under this code to invest public funds jointly on behalf of the entities that participate in the pool and whose investment objectives in order of priority are:

(A) preservation and safety of principal;

(B) liquidity; and

(C) yield.

(7) "Local government" means a municipality, a county, a school district, a district or authority created under Section 52(b)(1) or (2), Article III, or Section 59, Article XVI, Texas Constitution, a fresh water supply district, a hospital district, and any political subdivision, authority, public corporation, body politic, or instrumentality of the State of Texas, and any nonprofit corporation acting on behalf of any of those entities.

(8) "Market value" means the face or par value of an investment multiplied by the premium or discount quoted on the valuation date.

(9) "Pooled fund group" means an internally created fund of an investing entity in which one or more institutional accounts of the investing entity are invested.

(10) [(2)] "School district" means a public school district.

(11) "Separately invested asset" means an account or fund of a state agency or local government that is not invested in a pooled fund group.

(12) "State agency" means an office, department, commission, board, or other agency that is part of any branch of state government, an institution of higher education, and any nonprofit corporation acting on behalf of any of those entities.

Sec. 2256.003. AUTHORITY TO INVEST FUNDS; Entities Subject to This Chapter. Each governing body of the following entities may purchase, sell, and invest its funds and funds under its control in investments authorized under this subchapter in compliance with investment policies approved by the governing body and according to the standard of care prescribed by Section 2256.006 [2256.005]:

(1) a local government [municipality];

(2) a state agency [a county];

[(3) a school district;

[(4) a district or authority created under:

[(A) Article III, Section 52(b)(1) or (2), of the Texas Constitution; or

[(B) Article XVI, Section 59, of the Texas Constitution;
[(5) an institution of higher education;
[(6) a hospital district];
(3) [(7)] a nonprofit corporation acting on behalf of a local government
or a state agency [an entity listed in Subdivisions (1) through (6)]; or
(4) an investment pool acting on behalf of two or more local
governments, state agencies, or a combination of those entities [(8) a public
funds investment pool created under Chapter 791 acting on behalf of a
combination of entities listed in Subdivisions (1) through (6)].

Sec. 2256.004. APPLICABILITY. This subchapter does not apply to:

- (1) a public retirement system as defined by Section 802.001;
- (2) state funds invested as authorized by Section 404.024;
- (3) an institution of higher education having total endowments of at
least \$95 million in book value on May 1, 1995; or
- (4) funds invested by the Veterans' Land Board as authorized by
Chapter 161, 162, or 164, Natural Resources Code.

Sec. 2256.005. INVESTMENT POLICIES; INVESTMENT STRATEGIES;
INVESTMENT OFFICER. (a) The governing body of an investing entity shall
adopt by rule, order, ordinance, or resolution, as appropriate, a written
investment policy regarding the investment of its funds and funds under its
control.

(b) The investment policies must:

- (1) be written;
- (2) primarily emphasize safety of principal and liquidity; [and]
- (3) address investment diversification, yield, and maturity and the
quality and capability of investment management; and
- (4) include:

(A) a list of the types of authorized investments in which the
investing entity's funds may be invested;

(B) the maximum allowable stated maturity of any individual
investment owned by the entity; and

(C) for pooled fund groups, the maximum average dollar-
weighted maturity allowed based on the stated maturity date for the portfolio.

(c) [(b)] The investment policies may provide that bids for certificates of
deposit be solicited:

- (1) orally;
- (2) in writing;
- (3) electronically; or
- (4) in any combination of those methods.

(d) As an integral part of an investment policy, the governing body shall
adopt a separate written investment strategy for each of the funds under its
control. Each investment strategy must describe the investment objectives for
the particular fund using the following priorities in order of importance:

- (1) understanding of the suitability of the investment to the financial
requirements of the entity;
- (2) preservation and safety of principal;
- (3) liquidity;
- (4) marketability of the investment if the need arises to liquidate the
investment before maturity;

(5) diversification of the investment portfolio; and

(6) yield.

(e) The governing body of an investing entity shall review its investment policy and investment strategies not less than annually.

(f) Each investing entity shall designate, by rule, order, ordinance, or resolution, as appropriate, one or more officers or employees of the state agency, local government, or investment pool as investment officer to be responsible for the investment of its funds. Unless otherwise authorized by law, a person may not deposit, withdraw, invest, transfer, or manage in any other manner funds of a state agency, local government, or investment pool without express written authority of the governing body, chief executive officer, or chief financial officer of the state agency, local government, or investment pool, consistent with the investment policy adopted by the entity. Authority granted to a person to deposit, withdraw, invest, transfer, or manage an entity's funds is effective until rescinded by the investing entity or until termination of the person's employment by the investing entity.

(g) Subsection (f) does not apply to a state agency, local government, or investment pool for which an officer of the entity is assigned by law the function of investing its funds.

(h) An officer or employee of a commission created under Chapter 391, Local Government Code, is ineligible to be designated as an investment officer under Subsection (f).

(i) An investment officer of an entity who has a personal business relationship with an entity seeking to sell an investment to the entity shall file a statement disclosing that personal business interest. An investment officer who is related within the second degree by affinity or consanguinity, as determined under Chapter 573, to an individual seeking to sell an investment to the investment officer's entity shall file a statement disclosing that relationship. A statement required under this subsection must be filed with the Texas Ethics Commission and the governing body of the entity.

(j) The governing body of an investing entity may specify in its investment policy that any investment authorized by this chapter is not suitable.

(k) A written copy of the investment policy shall be presented to any person seeking to sell to the entity an authorized investment. The registered principal of the business organization seeking to sell an authorized investment shall execute a written instrument substantially to the effect that the registered principal has:

(1) received and thoroughly reviewed the investment policy of the entity; and

(2) acknowledged that the organization has implemented reasonable procedures and controls in an effort to preclude imprudent investment activities arising out of investment transactions conducted between the entity and the organization.

(l) The investment officer of an entity may not buy any securities from a person who has not delivered to the entity an instrument in substantially the form provided by Subsection (k).

(m) An investing entity, in conjunction with its annual financial audit, shall perform a compliance audit of management controls on investments and

adherence to the entity's established investment policies. State agencies shall report the results of the audit performed under this subsection to the state auditor. The state auditor shall compile the results of reports received under this subsection and annually report those results to the legislative audit committee.

Sec. 2256.006 [~~2256.005~~]. STANDARD OF CARE. (a) Investments shall be made with judgment and care, under prevailing circumstances, that a person of prudence, discretion, and intelligence would exercise in the management of the person's own affairs, not for speculation, but for investment, considering the probable safety of capital and the probable income to be derived. Investment of funds shall be governed by the following investment objectives, in order of priority:

- (1) preservation and safety of principal;
- (2) liquidity; and
- (3) yield.

(b) In determining whether an investment officer has exercised prudence with respect to an investment decision, the determination shall be made taking into consideration:

(1) the investment of all funds, or funds under the entity's control, over which the officer had responsibility rather than a consideration as to the prudence of a single investment; and

(2) whether the investment decision was consistent with the written investment policy of the entity.

Sec. 2256.007. INVESTMENT TRAINING; STATE AGENCY BOARD MEMBERS AND OFFICERS. (a) Each member of the governing board of a state agency and its investment officer shall attend at least one training session relating to the person's responsibilities under this chapter within six months after taking office or assuming duties.

(b) The governor's office shall provide training under this section for members and officers other than members and officers of an institution of higher education. The Texas Higher Education Coordinating Board shall provide the training for members and officers of institutions of higher education.

(c) Training under this section must include education in investment controls, security risks, strategy risks, market risks, and compliance with this chapter.

Sec. 2256.008. INVESTMENT TRAINING; LOCAL GOVERNMENTS.

(a) The treasurer, the chief financial officer if the treasurer is not the chief financial officer, and the investment officer of a local government shall attend at least one training session relating to the treasurer's or officer's responsibilities under this chapter within 12 months after taking office or assuming duties.

(b) Training under this section must include education in investment controls, security risks, strategy risks, market risks, and compliance with this chapter.

Sec. 2256.009 [~~2256.006~~]. AUTHORIZED INVESTMENTS: OBLIGATIONS OF, OR GUARANTEED BY, GOVERNMENTAL ENTITIES. (a) Except as provided by Subsection (b), the [The] following are authorized investments under this subchapter:

(1) obligations of the United States or its agencies and instrumentalities;

(2) direct obligations of this state or its agencies and instrumentalities;

(3) collateralized mortgage obligations directly issued by a federal agency or instrumentality of the United States, the underlying security for which is guaranteed by an agency or instrumentality of the United States;

(4) other obligations, the principal and interest of which are unconditionally guaranteed or insured by, or backed by the full faith and credit of, this state or the United States or their respective agencies and [its] instrumentalities; and

(5) obligations of states, agencies, counties, cities, and other political subdivisions of any state rated as to investment quality by a nationally recognized investment rating firm not less than A or its equivalent.

(b) The following are not authorized investments under this section:

(1) obligations whose payment represents the coupon payments on the outstanding principal balance of the underlying mortgage-backed security collateral and pays no principal;

(2) obligations whose payment represents the principal stream of cash flow from the underlying mortgage-backed security collateral and bears no interest;

(3) collateralized mortgage obligations that have a stated final maturity date of greater than 10 years; and

(4) collateralized mortgage obligations the interest rate of which is determined by an index that adjusts opposite to the changes in a market index.

Sec. 2256.010 [2256.007]. AUTHORIZED INVESTMENTS: CERTIFICATES OF DEPOSIT. A certificate of deposit is an authorized investment under this subchapter if the certificate of deposit is issued by a state or national bank domiciled in this state or a savings and loan association domiciled in this state and is:

(1) guaranteed or insured by the Federal Deposit Insurance Corporation or its successor;

(2) secured by obligations that are described by Section 2256.009(a) [2256.006], including mortgage backed securities directly issued by a federal agency or instrumentality that have a market value of not less than the principal amount of the certificates, but excluding those mortgage backed securities of the nature described by Section 2256.009(b); or

(3) secured in any other manner and amount provided by law for deposits of the investing entity.

Sec. 2256.011 [2256.008]. AUTHORIZED INVESTMENTS: REPURCHASE AGREEMENTS. (a) A fully collateralized repurchase agreement is an authorized investment under this subchapter if the repurchase agreement:

(1) has a defined termination date;

(2) is secured by obligations described by Section 2256.009(a)(1) [2256.006(1)]; and

(3) requires the securities being purchased by the entity to be [is] pledged to the entity, held in the entity's name, and deposited at the time the investment is made with the entity or with a third party selected and [or] approved by the entity[; ~~and~~]

~~[(4) is placed through a primary government securities dealer, as defined by the Federal Reserve, or a bank domiciled in this state].~~

(b) In this section, "repurchase agreement" means a simultaneous agreement to buy, hold for a specified time, and sell back at a future date obligations described by Section 2256.009(a)(1) ~~[2256.006(1)]~~, at a ~~[the principal and interest of which are guaranteed by the United States in]~~ market value at the time the funds are disbursed of not less than the principal amount of the funds disbursed. The term includes a direct security repurchase agreement and a reverse security repurchase agreement.

(c) Notwithstanding any other law, the term of any reverse security repurchase agreement may not exceed 90 days after the date the reverse security repurchase agreement is delivered.

(d) Money received by an entity under the terms of a reverse security repurchase agreement shall be used to acquire additional authorized investments, but the term of the authorized investments acquired must mature not later than the expiration date stated in the reverse security repurchase agreement.

Sec. 2256.012 ~~[2256.009]~~. AUTHORIZED INVESTMENTS: BANKERS' ACCEPTANCES. A bankers' acceptance is an authorized investment under this subchapter if the bankers' acceptance:

(1) has a stated maturity of 270 days or fewer from the date of its issuance;

(2) will be, in accordance with its terms, liquidated in full at maturity;

(3) is eligible for collateral for borrowing from a Federal Reserve Bank; and

(4) is accepted by a bank organized and existing under the laws of the United States or any state, if the short-term obligations of the bank, or of a bank holding company of which the bank is the largest subsidiary, are rated not less than A-1 or P-1 or an equivalent rating by at least one nationally recognized credit rating agency.

Sec. 2256.013 ~~[2256.010]~~. AUTHORIZED INVESTMENTS: COMMERCIAL PAPER. Commercial paper is an authorized investment under this subchapter if the commercial paper:

(1) has a stated maturity of 270 days or fewer from the date of its issuance; and

(2) is rated not less than A-1 or P-1 or an equivalent rating by at least:

(A) two nationally recognized credit rating agencies; or

(B) one nationally recognized credit rating agency and is fully secured by an irrevocable letter of credit issued by a bank organized and existing under the laws of the United States or any state.

Sec. 2256.014 ~~[2256.011]~~. AUTHORIZED INVESTMENTS: MUTUAL FUNDS. (a) A no-load money market mutual fund is an authorized investment under this subchapter if the mutual fund:

(1) is regulated by ~~[registered with]~~ the Securities and Exchange Commission;

(2) has a dollar-weighted average stated ~~[portfolio]~~ maturity of 90 ~~[120]~~ days or fewer; and

~~[(3) is invested exclusively in obligations described by Sections 2256.006 through 2256.010; and]~~

(3) ~~[(4)]~~ includes in its investment objectives the maintenance of a stable net asset value of \$1 for each share.

(b) In addition to a no-load money market mutual fund permitted as an authorized investment in Subsection (a), a no-load mutual fund is an authorized investment under this subchapter if the mutual fund:

- (1) is registered with the Securities and Exchange Commission;
- (2) has an average weighted maturity of less than two years;
- (3) is invested exclusively in obligations approved by this subchapter;
- (4) is continuously rated as to investment quality by at least one nationally recognized investment rating firm of not less than AAA or its equivalent; and

(5) conforms to the requirements set forth in Sections 2256.016(b) and (c) relating to the eligibility of investment pools to receive and invest funds of investing entities.

(c) An entity is not authorized by this section to:

(1) invest in the aggregate more than 80 percent of its monthly average fund balance, excluding bond proceeds and reserves and other funds held for debt service, in money market mutual funds described in Subsection (a) or mutual funds described in Subsection (b), either separately or collectively;

(2) invest in the aggregate more than 15 percent of its monthly average fund balance, excluding bond proceeds and reserves and other funds held for debt service, in mutual funds described in Subsection (b); or

(3) [(2)] invest its funds or funds under its control, including [excluding] bond proceeds and reserves and other funds held for debt service, in any one [money market] mutual fund described in Subsection (a) or (b) in an amount that exceeds 10 percent of the total assets of the [money market] mutual fund.

Sec. 2256.015. AUTHORIZED INVESTMENTS: GUARANTEED INVESTMENT CONTRACTS. (a) A guaranteed investment contract is an authorized investment for state agencies for bond proceeds under this subchapter if the guaranteed investment contract:

(1) has a defined termination date;
(2) is secured by obligations described by Section 2256.009(a)(1), excluding those obligations described by Section 2256.009(b), in an amount at least equal to the amount of bond proceeds invested under the contract; and

(3) is pledged to the entity and deposited with the entity or with a third party selected and approved by the entity.

(b) Bond proceeds, other than bond proceeds representing reserves and funds maintained for debt service purposes, may not be invested under this subchapter in a guaranteed investment contract with a term of longer than five years from the date of issuance of the bonds.

(c) To be eligible as an authorized investment:

(1) the governing body of the entity must specifically authorize guaranteed investment contracts as an eligible investment in the order, ordinance, or resolution authorizing the issuance of bonds;

(2) the entity must receive bids from at least three separate providers with no material financial interest in the bonds from which proceeds were received;

(3) the entity must purchase the highest yielding guaranteed investment contract for which a qualifying bid is received;

(4) the price of the guaranteed investment contract must take into account the reasonably expected drawdown schedule for the bond proceeds to be invested; and

(5) the provider must certify the administrative costs reasonably expected to be paid to third parties in connection with the guaranteed investment contract.

~~[Sec. 2256.012. AUTHORIZED INVESTMENTS: COMMON TRUST FUNDS. (a) A qualified common trust fund is an authorized investment for the local funds of an institution of higher education and for the bond proceeds and reserves and other funds held for debt service of a municipality, county, school district, or navigation district if the common trust fund:~~

~~(1) is owned or administered by a bank domiciled in this state;~~

~~(2) consists exclusively of assets that are obligations described by Sections 2256.006 through 2256.010;~~

~~(3) complies with the Internal Revenue Code of 1986 and applicable federal regulations governing the investment of bond proceeds and reserves and other funds held for debt service; and~~

~~(4) meets the cash flow requirements and the investment needs of the political subdivision or institution.~~

~~[(b) In this section, "common trust fund" includes a comparable investment device.]~~

Sec. 2256.016 [2256.013]. AUTHORIZED INVESTMENTS: INVESTMENT POOLS. (a) An entity may invest its funds and funds under its control through an eligible investment pool if the governing body of the entity by rule, order, ordinance, or resolution, as appropriate, authorizes investment in the particular pool. An investment pool shall invest the funds it receives from entities in authorized investments permitted by this subchapter.

(b) To be eligible to receive funds from and invest funds on behalf of an entity under this chapter, an investment pool must furnish to the investment officer or other authorized representative of the entity an offering circular or other similar disclosure instrument that contains, at a minimum, the following information:

(1) the types of investments in which money is allowed to be invested;

(2) the maximum average dollar-weighted maturity allowed, based on the stated maturity date, of the pool;

(3) the maximum stated maturity date any investment security within the portfolio has;

(4) the objectives of the pool;

(5) the size of the pool;

(6) the names of the members of the advisory board of the pool and the dates their terms expire;

(7) the custodian bank that will safekeep the pool's assets;

(8) whether the intent of the pool is to maintain a net asset value of one dollar and the risk of market price fluctuation;

(9) whether the only source of payment is the assets of the pool at market value or whether there is a secondary source of payment, such as insurance or guarantees, and a description of the secondary source of payment;

(10) the name and address of the independent auditor of the pool;

(11) the requirements to be satisfied for an entity to deposit funds in and withdraw funds from the pool and any deadlines or other operating policies required for the entity to invest funds in and withdraw funds from the pool; and

(12) the performance history of the pool, including yield, average dollar-weighted maturities, and expense ratios.

(c) To maintain eligibility to receive funds from and invest funds on behalf of an entity under this chapter, an investment pool must furnish to the investment officer or other authorized representative of the entity:

(1) investment transaction confirmations; and

(2) a monthly report that contains, at a minimum, the following information:

(A) the types and percentage breakdown of securities in which the pool is invested;

(B) the current average dollar-weighted maturity, based on the stated maturity date, of the pool;

(C) the current percentage of the pool's portfolio in investments that have stated maturities of more than one year;

(D) the book value versus the market value of the pool's portfolio, using amortized cost valuation;

(E) the size of the pool;

(F) the number of participants in the pool;

(G) the custodian bank that is safekeeping the assets of the pool;

(H) a listing of daily transaction activity of the entity participating in the pool;

(I) the yield and expense ratio of the pool;

(J) the portfolio managers of the pool; and

(K) any changes or addenda to the offering circular.

(d) An entity by contract may delegate to an investment pool the authority to hold legal title as custodian of investments purchased with its local funds.

(e) In this section, "yield" shall be calculated in accordance with regulations governing the registration of open-end management investment companies under the Investment Company Act of 1940, as promulgated from time to time by the federal Securities and Exchange Commission.

Sec. 2256.017. PORTFOLIO OF CERTAIN INVESTMENT POOLS. A public funds investment pool created to function as a money market mutual fund must mark its portfolio to market daily and, to the extent reasonably possible, stabilize at a \$1 net asset value. If the ratio of the market value of the portfolio divided by the book value of the portfolio is less than 0.995 or greater than 1.005, portfolio holdings shall be sold as necessary to maintain the ratio between 0.995 and 1.005.

Sec. 2256.018. ADVISORY BOARD OF INVESTMENT POOLS. (a) An investment pool other than a pool described by Subsection (b) shall establish an advisory board composed of participants in the pool and other persons.

(b) A public funds investment pool created under Chapter 791 and managed by a state agency shall establish an advisory board composed equally of participants in the pool and other persons who do not have a business

relationship with the pool. A board member must be qualified to advise the pool.

Sec. 2256.019. RATING OF CERTAIN INVESTMENT POOLS. A public funds investment pool must be continuously rated no lower than AAA or AAA-m or at an equivalent rating by at least one nationally recognized rating service.

[BIDS FOR COMMON TRUST FUND INVESTMENTS. (a) An institution of higher education or a municipality, county, school district, or navigation district may invest in a common trust fund under Section 2256.012 only after soliciting orally or in another manner competitive bids from at least three banks.

[(b) The solicitations for bids required by Subsection (a) for a county shall be made only to banks located in the county unless there are fewer than three banks available for the investment located in the county; in which case, the solicitations shall be made to each bank in the county and, as necessary to complete the solicitations, to banks located in this state.

[(c) The solicitations for bids required by Subsection (a) for a municipality or a school district shall be made only to banks located in the municipality or school district unless there are fewer than three banks available for the investments located in the municipality or school district; in which case, the solicitations shall be made to each bank in the municipality or school district and, as necessary to complete the solicitations, to banks in a county in which the municipality or school district is located. If there are fewer than three banks available for investments in the municipality or school district and in the counties in which the municipality or school district is located, the solicitations shall be made to each bank in the municipality or school district and in the counties in which the municipality or school district is located, and, as necessary to complete the solicitations, to banks located in this state.

[(d) This section applies to a nonprofit corporation acting on behalf of a municipality, county, or school district as it applies to the municipality, county, or school district.]

Sec. 2256.020 [2256.014]. AUTHORIZED INVESTMENTS: INSTITUTIONS OF HIGHER EDUCATION. In addition to the authorized investments permitted by this subchapter, an institution of higher education may purchase, sell, and invest its funds and funds under its control in the following:

(1) cash management and fixed income funds sponsored by organizations exempt from federal income taxation under Section 501(f), Internal Revenue Code of 1986 (26 U.S.C. Section 501(f));

(2) negotiable certificates of deposit issued by a bank that has a certificate of deposit rating of at least 1 or the equivalent by a nationally recognized credit rating agency or that is associated with a holding company having a commercial paper rating of at least A-1, P-1, or the equivalent by a nationally recognized credit rating agency; and

(3) corporate bonds, debentures, or similar debt obligations rated by a nationally recognized investment rating firm in one of the two highest long-term rating categories, without regard to gradations within those categories.

Sec. 2256.021. EFFECT OF LOSS OF REQUIRED RATING. An investment that requires a minimum rating under this subchapter does not qualify as an authorized investment during the period the investment does not have the minimum rating. An entity shall take all prudent measures that are

consistent with its investment policy to liquidate an investment that does not have the minimum rating.

Sec. 2256.022. EXPANSION OF INVESTMENT AUTHORITY. Expansion of investment authority granted by this chapter shall require a risk assessment by the state auditor or performed at the direction of the state auditor.

Sec. 2256.023. INTERNAL MANAGEMENT REPORTS. (a) Not less than quarterly, the investment officer shall prepare and submit to the governing body of the entity a written report of investment transactions for all funds covered by this chapter for the preceding reporting period.

(b) The report must:

(1) describe in detail the investment position of the entity on the date of the report;

(2) be prepared jointly by all investment officers of the entity;

(3) be signed by each investment officer of the entity;

(4) contain a summary statement of each pooled fund group that states the:

(A) beginning market value for the reporting period;

(B) additions and changes to the market value during the period; and

(C) ending market value for the period;

(5) state the book value and market value of each separately invested asset at the beginning and end of the reporting period by the type of asset and fund type invested;

(6) state the maturity date of each separately invested asset that has a maturity date;

(7) state the account or fund or pooled group fund in the state agency or local government for which each individual investment was acquired; and

(8) state the compliance of the investment portfolio of the state agency or local government as it relates to:

(A) the investment strategy expressed in the agency's or local government's investment policy; and

(B) relevant provisions of this chapter.

(c) The report shall be presented not less than quarterly to the governing body and the chief executive officer of the entity within a reasonable time after the end of the period. [BANK UNWILLING TO BID; PRESUMPTION. A governmental entity or nonprofit corporation that is notified by a bank that the bank is unable or unwilling to bid for investments under Section 2256.012 may presume that the bank continues to be unable or unwilling to bid for investments until the bank in writing notifies the entity otherwise.]

Sec. 2256.024 [2256.015]. SUBCHAPTER CUMULATIVE. (a) The authority granted by this subchapter is in addition to that granted by other law. Except as provided by Subsection (b), this subchapter does not:

(1) prohibit an investment specifically authorized by other law; or

(2) authorize an investment specifically prohibited by other law.

(b) Except with respect to those investing entities described in Subsection (c), a security described in Section 2256.009(b) is not an authorized investment for a state agency, a local government, or another investing entity, notwithstanding any other provision of this chapter or other law to the contrary.

(c) Mortgage pass-through certificates and individual mortgage loans that may constitute an investment described in Section 2256.009(b) are authorized investments with respect to the housing bond programs operated by:

(1) the Texas Department of Housing and Community Affairs or a nonprofit corporation created to act on its behalf;

(2) an entity created under Chapter 392, Local Government Code; or

(3) an entity created under Chapter 394, Local Government Code.

~~[Sec. 2256.016. SUBCHAPTER NOT APPLICABLE TO RETIREMENT SYSTEMS. This subchapter does not apply to a public retirement system as defined by Section 802.001.]~~

~~[Sections 2256.025 [2256.017]-2256.050 reserved for expansion]~~

SUBCHAPTER B. MISCELLANEOUS PROVISIONS

[INVESTMENT OF LOCAL FUNDS]

Sec. 2256.051. ELECTRONIC FUNDS TRANSFER. Any local government may use electronic means to transfer or invest all funds collected or controlled by the local government. [DEFINITIONS. In this subchapter:

(1) "Investment pool" means an entity created under Chapter 791 to invest public funds of two or more local governments;

(2) "Local funds" means public funds in the custody of a state agency or political subdivision that:

(A) are not required by law to be deposited in the state treasury; and

(B) the agency or subdivision has authority to invest.

(3) "Political subdivision" means a county, municipality, or special purpose district.

(4) "State agency" means an office, department, commission, board, other agency, institution of higher education, or river authority that is part of any branch of state government.

[Sec. 2256.052. Rules Governing Investment. Each state agency or political subdivision shall adopt rules governing the investment of its local funds, including rules specifying the scope of authority of officers and employees designated to invest local funds:

[Sec. 2256.053. Investment Rate of Return. A state agency, political subdivision, or investment pool shall invest its local funds in investments that:

(1) yield the highest possible rate of return;

(2) protect the principal; and

(3) are consistent with the operating requirements of the agency, subdivision, or pool as determined by the governing body.

[Sec. 2256.054. Designation of Investment Officer. (a) Each state agency or political subdivision shall designate, by rule, order, ordinance, or resolution, one or more officers or employees of the agency, subdivision, or investment pool to be responsible for the investment of its local funds:

(b) Subsection (a) does not apply if an officer of the agency or subdivision is assigned by law the function of investing its local funds.

(c) An officer or employee of a commission created under Chapter 391, Local Government Code, is ineligible to be designated as an investment officer under Subsection (a):

[Sec. 2256.055. Express Authority Required. A person may not deposit;

withdraw, invest, transfer, or manage in any other manner local funds of a state agency or political subdivision without express written authority of the governing body or chief executive officer of the agency or subdivision.

[Sec. 2256.056. Legal Title in Investment Pool. A political subdivision by contract may delegate to an investment pool the authority to hold legal title as custodian of investments purchased with its local funds.

[Sec. 2256.057. Internal Management Reports. (a) At least annually, the investment officer of a state agency or political subdivision shall prepare a written report of the agency's or subdivision's local funds investment transactions for the preceding year.

[(b) The report must:

[(1) describe in detail the investment position of the agency or subdivision on the date of the report;

[(2) be prepared jointly by all investment officers of the agency or subdivision; and

[(3) be signed by each investment officer of the agency or subdivision.

[(c) The report shall be delivered to the governing body and the chief executive officer of the agency or subdivision.]

Sec. 2256.052 [2256.058]. PRIVATE AUDITOR. Notwithstanding any other law, a state agency shall employ a private auditor if authorized by the legislative audit committee either on the committee's initiative or on request of the governing body of the agency.

[Sec. 2256.059. Effect of Other Law. This subchapter does not:

[(1) prohibit an investment specifically authorized by other law; or

[(2) authorize an investment specifically prohibited by other law.

[Sections 2256.060-2256.100 reserved for expansion]

[SUBCHAPTER C. PAYMENT FOR AND DELIVERY AND DEPOSIT OF SECURITIES PURCHASED BY STATE

[Sec. 2256.101. Authorized Investments; Application of Income. (a) A board or agency of the state that may direct the investment of funds of the board or agency may invest those funds in:

[(1) direct obligations of the United States;

[(2) obligations the principal and interest of which are guaranteed by the United States;

[(3) direct obligations of or participation certificates guaranteed by:

[(A) a farm credit bank;

[(B) the Federal National Mortgage Association;

[(C) a federal home loan bank; or

[(D) a bank for cooperatives;

[(4) certificates of deposit of a bank or trust company, the deposits of which are fully secured by a pledge of securities described by Subdivisions (1) through (3);

[(5) other securities made eligible for investment by other law or the constitution; or

[(6) a combination of securities described by Subdivisions (1) through (5).

[(b) The board or agency shall direct the application of income from investments under this section.]

Sec. 2256.053 [~~2256.102~~]. PAYMENT FOR SECURITIES PURCHASED BY STATE. The comptroller, the state treasurer, or the disbursing officer of an agency that has the power to invest assets directly may pay for authorized securities purchased from or through a member in good standing of the National Association of Securities Dealers or from or through a national or state bank on receiving an invoice from the seller of the securities showing that the securities have been purchased by the board or agency and that the amount to be paid for the securities is just, due, and unpaid. A purchase of securities may not be made at a price that exceeds the existing market value of the securities.

Sec. 2256.054 [~~2256.103~~]. DELIVERY OF SECURITIES PURCHASED BY STATE. A security purchased under this chapter [~~Section 2256.102~~] may be delivered to the state treasurer, a bank, or the board or agency investing its funds. The delivery shall be made under normal and recognized practices in the securities and banking industries, including the book entry procedure of the Federal Reserve Bank.

Sec. 2256.055 [~~2256.104~~]. DEPOSIT OF SECURITIES PURCHASED BY STATE. At the direction of the state treasurer or the agency, a security purchased under this chapter [~~Section 2256.102~~] may be deposited in trust with a bank or federal reserve bank or branch designated by the treasurer, whether in or outside the state. The deposit shall be held in the entity's name as evidenced by a trust receipt of the bank with which the securities are deposited.

SECTION 2. Section 51.003(b), Education Code, is amended to read as follows:

(b) The funds shall either be deposited in the depository bank or banks or invested as authorized by Chapter 2256, Government Code [~~(the) Public Funds Investment Act~~] [~~of 1987~~]. Funds that are to be deposited in the depository bank or banks must be deposited within seven days from the date of collection.

SECTION 3. Section 51.0031(a), Education Code, is amended to read as follows:

(a) A governing board may deposit funds under its control as provided in Section 51.003 of this code, may invest funds under its control in accordance with Chapter 2256, Government Code [~~financial instruments eligible for investment of funds in the state treasury~~] and, with regard to donations, gifts, and trusts, may establish endowment funds that operate as trusts and are managed under prudent person standards.

SECTION 4. Subchapter A, Chapter 51, Education Code, is amended by adding Section 51.0032 to read as follows:

Sec. 51.0032. INVESTMENT REPORTS AND POLICIES. (a) A governing board shall adopt by rule or resolution a written investment policy for the investment of its institutional funds.

(b) Not less than quarterly, an institution of higher education shall prepare and submit to the governing board of the institution a written report of the institution's institutional funds investment transactions for the preceding reporting period.

(c) In addition to other information that may be required by the governing board, the report must contain:

(1) a summary statement of each pooled fund group that states the beginning market value for the reporting period, additions and changes to the

market value during the period, and the ending market value for the period; and

(2) the book value and market value of each separately invested asset at the beginning and end of the reporting period by type of asset and fund type invested.

(d) In this section:

(1) "Governing board" means a governing board described in Section 51.0031(c).

(2) "Institution of higher education" means an institution of higher education under the governance of a governing board to which this section applies.

(3) "Pooled fund group" means an internally created fund of an institution of higher education in which one or more institutional accounts are invested.

(4) "Separately invested asset" means an account of an institution of higher education that is not invested in a pooled fund group.

SECTION 5. Section 1, Chapter 181; Section 1, Chapter 858; and Section 1, Chapter 946, Acts of the 73rd Legislature, Regular Session, 1993, are repealed.

SECTION 6. As provided by Section 1.02, Senate Bill No. 959, Acts of the 74th Legislature, Regular Session, 1995, this Act controls over Senate Bill No. 959 to the extent of any conflict.

SECTION 7. Each member of a governing board and each investment officer who is in office or who has assumed duties on September 1, 1995, and who would be required by Section 2256.007(a), Government Code, as amended by this Act, to attend investment training within six months after taking office or assuming duties shall attend at least one training session relating to the person's responsibilities under Chapter 2256, Government Code, that meets the requirements of that section not later than March 1, 1996.

SECTION 8. Each treasurer, chief financial officer, and investment officer who is in office or who has assumed duties on September 1, 1995, and who would be required by Section 2256.008(a), Government Code, as amended by this Act, to attend investment training within 12 months after taking office or assuming duties shall attend at least one training session relating to the person's responsibilities under Chapter 2256, Government Code, that meets the requirements of that section not later than September 1, 1997.

SECTION 9. The state auditor shall conduct, or shall hire an independent evaluator to conduct, an assessment of the risks and benefits associated with authorizing entities subject to this chapter to invest in mutual funds other than money market mutual funds, investment pools other than investment pools that function as money market mutual funds, and guaranteed investment contracts. The state auditor shall report these findings to the legislature not later than September 1, 1996. This section expires on September 2, 1996.

SECTION 10. This Act takes effect September 1, 1995.

SECTION 11. An entity that acquired authorized investment securities under Chapter 2256, Government Code, before the effective date of this Act that are no longer authorized investment securities under that chapter as amended by this Act is not required by this Act to liquidate those securities before the final stated maturity of the investment.

SECTION 12. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Senate Amendment No. 1

Amend **CSHB 2459** in SECTION 1 of the bill, in Section 2256.011 (Committee printing page 5, line 24-26), by reinstating the struck-through subsection 2256.014(a)(4), by replacing the phrase "a bank domiciled in this state" with the phrase "a financial institution doing business in this state", and making any necessary conforming changes:

Senate Amendment No. 2

Amend **CSHB 2459** in SECTION 1 of the bill, in Section 2256.014(c) by inserting a new subsection 2256.014(c)(3) (Committee printing page 6, line 38) as shown below, renumbering the existing subsection 2256.014(c)(3), and making any necessary conforming changes:

(3) invest any portion of bond proceeds, reserves and funds held for debt service, in mutual funds described in Subsection (b).

HB 2587 - WITH SENATE AMENDMENTS

Representative Alexander called up with senate amendments for consideration at this time,

HB 2587, A bill to be entitled An Act relating to the operation of certain aboveground and underground storage tanks and the regulation of underground storage tank installers; providing penalties.

On motion of Representative Alexander, the house concurred in the senate amendments to **HB 2587**.

HB 2587 - TEXT OF SENATE AMENDMENTS

CSHB 2587, A bill to be entitled An Act relating to the regulation of certain aboveground and underground storage tanks and the regulation of underground storage tank installers; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 26.341(b), Water Code, is amended to read as follows:

(b) The legislature declares that it is the policy of this state and the purpose of this subchapter to:

(1) maintain and protect the quality of groundwater and surface water resources in the state from certain substances in underground and aboveground storage tanks that may pollute groundwater and surface water resources; and

(2) require the use of all reasonable methods, including risk-based corrective action, to implement this policy.

SECTION 2. Section 26.342, Water Code, is amended by adding a new Subdivision (13) and renumbering subsequent subdivisions to read as follows:

(13) "Risk-based corrective action" means site assessment or site remediation, the timing, type, and degree of which is determined according to case-by-case consideration of actual or potential risk to public health from environmental exposure to a regulated substance released from a leaking underground or aboveground storage tank.

(14) [(13)] "Spent oil" means a regulated substance that is a lubricating oil or similar petroleum substance which has been refined from crude oil, used for its designed or intended purposes, and contaminated as a result of that use by physical or chemical impurities, including spent motor vehicle lubricating oils, transmission fluid, or brake fluid.

(15) [(14)] "Underground storage tank" means any one or combination of underground tanks and any connecting underground pipes used to contain an accumulation of regulated substances, the volume of which, including the volume of the connecting underground pipes, is 10 percent or more beneath the surface of the ground.

(16) [(15)] "Vehicle service and fueling facility" means a facility where motor vehicles are serviced or repaired and where petroleum products are stored and dispensed from fixed equipment into the fuel tanks of motor vehicles.

SECTION 3. Section 26.346, Water Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) The owner or operator of an underground or aboveground storage tank installed before December 1, 1995, that is required to be registered under this section and that has not been registered on or before December 31, 1995, is not eligible to receive reimbursement for that tank from the petroleum storage tank remediation fund except for:

(1) an owner of a registered facility who discovers an unregistered tank while removing, upgrading, or replacing a tank or while performing a site assessment;

(2) a state or local governmental agency that purchases a right-of-way and discovers during construction an unregistered tank in the right-of-way; or

(3) a property owner who reasonably could not have known that a tank was located on the property because a title search or the previous use of the property does not indicate a tank on the property.

(f) The owner or operator of an underground or aboveground storage tank installed on or after December 1, 1995, must register the tank under this section not later than the 30th day after the date the installation is completed to be eligible for reimbursement for the new tank.

SECTION 4. Subchapter I, Chapter 26, Water Code, is amended by adding Section 26.3475 to read as follows:

Sec. 26.3475. RELEASE DETECTION REQUIREMENTS; SPILL AND OVERFILL PREVENTION; CORROSION PROTECTION; NOTICE OF VIOLATION; SHUTDOWN. (a) All piping in an underground storage tank system that routinely conveys regulated substances under pressure must comply with commission requirements for pressurized piping release detection equipment.

(b) All piping in an underground storage tank system that routinely conveys regulated substances under suction must comply with commission requirements for suction-type piping release detection equipment.

(c) A tank in an underground storage tank system must comply with commission requirements for:

(1) tank release detection equipment; and

(2) spill and overfill equipment.

(d) An underground storage tank system must comply with commission

requirements for applicable tank integrity assessment and corrosion protection not later than December 22, 1998.

(e) The commission may issue a notice of violation to the owner or operator of an underground storage tank system that does not comply with this section, informing the owner or operator of the nature of the violation and that the commission may order the noncomplying underground storage tank system placed out of service if the owner or operator does not correct the violation within 30 days after the date the notice is received. If the owner or operator does not correct the violation within the prescribed time, the commission may order the noncomplying underground storage tank system out of service.

SECTION 5. Section 26.3512, Water Code, is amended by amending Subsections (b) and (e) and by adding Subsections (f)-(k) to read as follows:

(b) Funds from the petroleum storage tank remediation fund may not be used to pay, and the owner or operator of a petroleum storage tank ordered by the commission to take corrective action is responsible for payment of, the following:

(1) the owner or operator contribution described by Subsections (e)-(k) [Subsection (e) of this section];

(2) any expenses for corrective action that exceed the applicable amount specified by Section 26.3573(1) [\$1 million for each occurrence];

(3) any expenses for corrective action that are not covered by payment from the petroleum storage tank remediation fund under the rules or decisions of the commission under this subchapter; ~~or~~

(4) any expenses for corrective action not ordered or agreed to by the commission; or

(5) any expenses for corrective action incurred for confirmed releases initially discovered and reported to the commission after December 22, 1998.

(e) If an owner or operator submits a site assessment in accordance with commission rules before December 23, 1996, the [An] owner or operator shall pay under Subsection (b)(1) [of this section] the first expenses for corrective action taken for each occurrence as follows:

(1) a person who owns or operates 1,000 or more single petroleum storage tanks, the first \$10,000;

(2) a person who owns or operates not fewer than 100 or more than 999 single petroleum storage tanks, the first \$5,000;

(3) a person who owns or operates not fewer than 13 or more than 99 single petroleum storage tanks, the first \$2,500; and

(4) a person who owns or operates fewer than 13 single petroleum storage tanks, the first \$1,000.

(f) If an owner or operator does not submit a site assessment in accordance with commission rules before December 23, 1996, the owner or operator shall pay under Subsection (b)(1) the first expenses for corrective action taken for each occurrence as follows:

(1) a person who owns or operates 1,000 or more single petroleum storage tanks, the first \$20,000;

(2) a person who owns or operates not fewer than 100 or more than 999 single petroleum storage tanks, the first \$10,000;

(3) a person who owns or operates not fewer than 13 or more than 99 single petroleum storage tanks, the first \$5,000; and

(4) a person who owns or operates fewer than 13 single petroleum storage tanks, the first \$2,000.

(g) If an owner or operator's corrective action plan is approved by the commission under Section 26.3572 before December 23, 1997, the owner or operator shall pay under Subsection (b)(1) the amount provided by Subsection (e) for the first expenses for corrective action taken for each occurrence.

(h) If an owner or operator's corrective action plan is not approved by the commission under Section 26.3572 before December 23, 1997, the owner or operator shall pay under Subsection (b)(1) the first expenses for corrective action taken for each occurrence as follows:

(1) a person who owns or operates 1,000 or more single petroleum storage tanks, the first \$40,000;

(2) a person who owns or operates not fewer than 100 or more than 999 single petroleum storage tanks, the first \$20,000;

(3) a person who owns or operates not fewer than 13 or more than 99 single petroleum storage tanks, the first \$10,000; and

(4) a person who owns or operates fewer than 13 single petroleum storage tanks, the first \$4,000.

(i) If an owner or operator has a corrective action plan approved by the commission under Section 26.3572 and before December 23, 1998, has met the goals specified in the plan to be met by that date, the owner or operator shall pay under Subsection (b)(1) the amount specified by Subsection (e) for the first expenses for corrective action taken for each occurrence.

(j) If an owner or operator does not have a corrective action plan approved by the commission under Section 26.3572 or, on December 23, 1998, has not met the goals specified in the plan to be met by that date, the owner or operator shall pay under Subsection (b)(1) the first expenses for corrective action taken for each occurrence as follows:

(1) a person who owns or operates 1,000 or more single petroleum storage tanks, the first \$80,000;

(2) a person who owns or operates not fewer than 100 or more than 999 single petroleum storage tanks, the first \$40,000;

(3) a person who owns or operates not fewer than 13 or more than 99 single petroleum storage tanks, the first \$20,000; and

(4) a person who owns or operates fewer than 13 single petroleum storage tanks, the first \$8,000.

(k) An owner or operator of a site for which a closure letter has been issued under Section 26.3572 shall pay under Subsection (b)(1) the first \$50,000 of expenses for corrective action for each occurrence.

SECTION 6. Section 26.3513, Water Code, is amended by adding Subsection (m) to read as follows:

(m) The commission shall consider the person who is in day-to-day control of a petroleum storage tank system at a site that is in violation of this subchapter to be the:

(1) person primarily responsible for taking corrective action, for corrective action costs, for receiving a notice of violation, or for paying a penalty assessed; and

(2) primary subject of an enforcement action or order under this subchapter.

SECTION 7. Section 26.3514, Water Code, is amended by adding Subsections (f), (g), (h), and (i) to read as follows:

(f) A lender described by Subsection (a) is not liable as an owner or operator under this subchapter because the lender sells, re-leases, liquidates, or winds up operations and takes measures to preserve, protect, or prepare the secured aboveground or underground storage tank before sale or other disposition of the storage tank or the property if the lender:

(1) did not participate in the management of an aboveground or underground storage tank or real or personal property described by Subsection (a) before foreclosure or its equivalent on the storage tank or the property; and

(2) establishes, as provided by Subsection (g), that the ownership indicia maintained after foreclosure continue to be held primarily to protect a security interest.

(g) A lender may establish that the ownership indicia maintained after foreclosure continue to be held primarily to protect a security interest if, within 12 months after foreclosure, the lender:

(1) lists the aboveground or underground storage tank, or the facility or property on which the tank is located, with a broker, dealer, or agent who deals in that type of property; or

(2) advertises the aboveground or underground storage tank for sale or other disposition, at least monthly, in:

(A) a real estate publication;

(B) a trade or other publication appropriate for the aboveground or underground storage tank being advertised; or

(C) a newspaper of general circulation in the area in which the aboveground or underground storage tank is located.

(h) For purposes of Subsection (g), the 12-month period begins:

(1) when the lender acquires marketable title, if the lender, after the expiration of any redemption period or other waiting period required by law, was acting diligently to acquire marketable title; or

(2) on the date of foreclosure or its equivalent, if the lender does not act diligently to acquire marketable title.

(i) If a lender outbids, rejects, or does not act on an offer of fair consideration for the aboveground or underground storage tank or the facility or property on which the storage tank is located, it is presumed that the lender is not holding the ownership indicia primarily to protect the security interest unless the lender is required, in order to avoid liability under federal or state law, to make the higher bid, obtain the higher offer, or seek or obtain an offer in a different manner.

SECTION 8. Section 26.352, Water Code, is amended to read as follows:

Sec. 26.352. FINANCIAL RESPONSIBILITY. (a) The commission by rule shall adopt requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank.

(b) The rules must require that, after December 22, 1998, the owner or operator of a site for which a closure letter has been issued under Section 26.3572 shall have insurance coverage or evidence of financial responsibility

sufficient to satisfy all financial responsibility requirements under federal law or regulations. The rules must require that an owner or operator of a site that has been issued a closure letter and who is eligible to have a portion of any future corrective action costs paid under Section 26.3512 shall have insurance coverage or evidence of financial responsibility sufficient to satisfy the first expenses for corrective action as provided by Section 26.3512(k).

(c) The commission shall seek the assistance of the Texas Department of Insurance in developing the minimum requirements for insurance coverage required under this section.

(d) An owner or operator of an underground storage tank may submit the registration certificate issued by the commission to the owner or operator under Section 26.346 of this code to the United States Environmental Protection Agency as evidence of the owner's or operator's eligibility for funds for any expense for corrective action incurred for confirmed releases initially discovered and reported to the commission on or before December 22, 1998 [~~from the petroleum storage tank remediation fund~~].

(e) A registration certificate issued under Section 26.346 is not acceptable evidence of financial responsibility for:

(1) an underground storage tank that contains a petroleum substance other than:

(A) a petroleum product; or

(B) spent oil or hydraulic fluid if the tank is located at a vehicle service and fueling facility and is used as part of the operations of that facility; or

(2) any expenses for corrective action for confirmed releases initially discovered and reported to the commission after December 22, 1998.

(f) The commission shall enforce this section and may impose administrative and civil penalties on the owners or operators of underground storage tanks if acceptable evidence of financial responsibility is not maintained. An owner or operator commits an offense if the owner or operator operates an underground storage tank knowing that acceptable evidence of financial responsibility does not exist and is subject to criminal prosecution as provided by Subchapter F. The commission may seek injunctive relief in the district courts of Travis County to force the temporary or permanent closure of an underground storage tank for which acceptable evidence of financial responsibility is not maintained.

SECTION 9. Section 26.3572, Water Code, is amended by amending Subsections (b) and (c) and by adding Subsection (d) to read as follows:

(b) In administering the program, the commission shall:

(1) negotiate with or direct responsible parties in site assessment and remediation matters using risk-based corrective action;

(2) approve site-specific corrective action plans for each site as necessary, using risk-based corrective action;

(3) review and inspect site assessment and remedial activities and reports; ~~and~~

(4) use risk-based corrective action procedures as determined by commission rule to establish cleanup levels;

(5) adopt by rule criteria for assigning a priority to each site using

risk-based corrective action and assign a priority to each site according to those criteria;

(6) adopt by rule criteria for:

(A) risk-based corrective action site closures; and

(B) the issuance of a closure letter to the owner or operator of a tank site on completion of the commission's corrective action requirements; and

(7) process claims for petroleum storage tank remediation fund disbursement.

(c) The commission by rule may approve site assessment methodologies. The commission shall approve or disapprove a site assessment or corrective action plan, as defined by commission rule, on or before the 30th day after the commission receives the assessment or plan. The commission shall adopt by rule criteria to be used to determine:

(1) the necessity for site assessment; and

(2) the nature of the site assessment required.

(d) The commission may not approve a corrective action plan until the commission and the owner or operator of the site by agreement set specific goals in the plan for completing discrete corrective action tasks before specified dates. The owner or operator is responsible for meeting the goals.

SECTION 10. Sections 26.3573(d), (f), (h), (i), (k), and (p), Water Code, are amended to read as follows:

(d) The commission may use the money in the petroleum storage tank remediation fund to pay:

(1) necessary expenses associated with the administration of the petroleum storage tank remediation fund and the groundwater protection cleanup program, not to exceed an amount equal to five percent of the gross receipts of that fund, provided that the increment between two and five [three] percent of the gross receipts may be used only to pay administrative expenses associated with regulating petroleum storage tanks, reimbursing eligible owners and operators, [and] disposing of contaminated soils, and [further provided that the increment between three and five percent of the gross receipts may be used only to pay administrative expenses associated with] conducting claims audits in accordance with Section 26.35735 of this code~~[-reimbursing eligible owners and operators, and disposing of contaminated soils];~~

(2) expenses associated with investigation, cleanup, or corrective action measures performed in response to a release or threatened release from a petroleum storage tank, whether those expenses are incurred by the commission or pursuant to a contract between a contractor and an eligible owner or operator as authorized by this subchapter; and

(3) subject to the conditions of Subsection (e) of this section, expenses associated with investigation, cleanup, or corrective action measures performed in response to a release or threatened release of hydraulic fluid or spent oil from hydraulic lift systems or tanks located at a vehicle service and fueling facility and used as part of the operations of that facility.

(f) The commission, in accordance with this subchapter and rules adopted under this subchapter, may:

(1) contract directly with a person to perform corrective action and pay the contractor from the petroleum storage tank remediation fund;

(2) reimburse an eligible owner or operator from the petroleum storage tank remediation fund for the expenses of a corrective action that was:

(A) performed on or after September 1, 1987; and

(B) conducted in response to a confirmed release that was initially discovered and reported to the commission on or before December 22, 1998; or

(3) pay the claim of a person who has contracted with an eligible owner or operator to perform corrective action with funds from the petroleum storage tank remediation fund.

(h) Consistent with the objectives provided under Subsection (g) of this section and this subchapter, the commission may by rule adopt:

(1) guidelines the commission considers necessary for determining the amounts that may be paid from the petroleum storage tank remediation fund; and

(2) guidelines concerning reimbursement for expenses incurred by an eligible owner or operator and covered under Section 26.3512(d) of this code; and

~~[(3) minimum qualifications the commission considers necessary for a person with whom an eligible owner or operator may contract to participate in corrective action].~~

(i) The commission by rule may implement a registration program for persons who contract with an owner or operator of an underground storage tank or an aboveground storage tank, or with any other person, to perform corrective action under this subchapter. The commission, on the request of an appropriately licensed or registered professional engineer, shall register the engineer in the program. An engineer registered in the program may contract to perform corrective action under this subchapter unless the State Board of Registration for Professional Engineers determines the engineer is not qualified to perform a corrective action. An engineer registered in the program is subject only to the examination requirements, continuing education requirements, fees, and disciplinary procedures adopted by the State Board of Registration for Professional Engineers. The commission may adopt minimum qualifications for a person, other than an appropriately licensed or registered professional engineer, with whom an eligible owner or operator [and] may contract to participate in a corrective action and for a person, other than an appropriately licensed or registered professional engineer, who performs or supervises the corrective action. The commission may require [registration and] the use of registered contractors and registered corrective action supervisors by an eligible owner or operator as a prerequisite to the payment of [receiving] money from the petroleum storage tank remediation fund for corrective action under this subchapter. Any qualified registered contractor may conduct the characterization, study, appraisal, or investigation of a site. If a site remediation involves the installation or construction of on-site equipment, structures, or systems used in the extraction or management of wastes, except for soil excavation and landfill disposal or well sampling and monitoring, the owner or operator is not eligible for reimbursement from the petroleum storage tank remediation fund unless the plans and specifications for the equipment, structures, or systems are sealed by an appropriately licensed or registered

professional engineer and the equipment, structures, or systems are constructed under the supervision of an appropriately licensed or registered professional engineer. The commission by rule may establish a fee schedule and charge fees necessary to defray the costs of administering the registration program, including fees for processing applications, printing certificates, conducting examinations, and similar activities. Fees collected under this subsection shall be deposited in the state treasury to the credit of the storage tank fund. A person who violates a rule or order adopted by the commission under this subsection is subject to the appropriate sanctions and penalties imposed under this chapter.

(k) The commission shall satisfy a claim for payment that is eligible to be paid under this subchapter and the rules adopted under this subchapter made by a contractor, from the petroleum storage tank remediation fund as provided by this section and rules adopted by the commission under this section [Chapter 82, Acts of the 69th Legislature, Regular Session, 1985 (Article 601f, Vernon's Texas Civil Statutes)], regardless of whether the commission:

(1) contracts directly for the goods or services; or

(2) pays a claim under a contract executed by a petroleum storage tank owner or operator.

(p) Notwithstanding any other law to the contrary, an [An] owner or operator, or an agent of an owner or operator, is [shall] not [be] entitled to and may not[, nor shall] be paid[:] interest on any claim for payment from the petroleum storage tank remediation fund.

SECTION 11. Subchapter I, Chapter 26, Water Code, is amended by adding Section 26.35731 to read as follows:

Sec. 26.35731. CONSIDERATION AND PROCESSING OF APPLICATIONS FOR REIMBURSEMENT. (a) Except as provided by Subsection (b), the commission shall consider and process a claim by an eligible owner or operator for reimbursement from the petroleum storage tank remediation fund in the order in which it is received. The commission shall consider and process all claims by eligible owners and operators for reimbursement from the fund that were received before September 1, 1995, before the commission considers a claim received after that date.

(b) The commission may not consider, process, or pay a claim for reimbursement from the petroleum storage tank remediation fund for corrective action work begun after September 1, 1993, and without prior commission approval until all claims for reimbursement for corrective action work preapproved by the commission have been considered, processed, and paid.

SECTION 12. Section 26.35735, Water Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) The commission may audit a claim for payment as required by this section only:

(1) under guidelines adopted by commission rule that relate to conducting an audit under this section and denying a claim as a result of that audit and that are in effect when the audit is conducted; or

(2) in a case of suspected fraud.

(f) Not later than the 90th day after an audit under this section has been completed, the commission shall send a copy of the audit to the person whose claim for payment is the subject of the audit.

SECTION 13. Sections 26.3574(b), (x), and (y), Water Code, are amended to read as follows:

(b) A fee is imposed on the delivery of a petroleum product on withdrawal from bulk of that product as provided by this subsection. Each operator of a bulk facility on withdrawal from bulk of a petroleum product shall collect from the person who orders the withdrawal a fee in an amount determined as follows:

(1) \$25 [~~\$12.50~~] for each delivery into a cargo tank having a capacity of less than 2,500 gallons;

(2) \$50 [~~\$25~~] for each delivery into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons;

(3) \$75 [~~\$37.50~~] for each delivery into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons;

(4) \$100 [~~\$50~~] for each delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons; and

(5) a \$50 [~~\$25~~] fee for each increment of 5,000 gallons or any part thereof delivered into a cargo tank having a capacity of 10,000 gallons or more.

(x) After the deposits have been made to the credit of the general revenue fund as required by Section 403.092(c)(1), Government Code, as added by Chapter 533, Acts of the 73rd Legislature, 1993, the [The] fee imposed under this section may not be collected or required to be paid on or after the first day of the second month following notification by the commission of the date on which the unobligated balance in the petroleum storage tank remediation fund equals or exceeds \$125 million [~~during the 1990-1991 state fiscal biennium or \$100 million thereafter~~]. The commission shall notify the comptroller in writing of the date on which the unobligated balance equals or exceeds \$125 million [~~during the 1990-1991 state fiscal biennium or \$100 million thereafter~~].

(y) If the unobligated balance in the petroleum storage tank remediation fund falls below [~~\$50 million during the 1990-1991 state fiscal biennium or~~] \$25 million [~~thereafter~~], the fee shall be reinstated, effective on the first day of the second month following notification by the commission, in amounts determined as follows:

(1) \$12.50 for each delivery into a cargo tank having a capacity of less than 2,500 gallons;

(2) \$25 for each delivery into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons;

(3) \$37.50 for each delivery into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons;

(4) \$50 for each delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons; and

(5) a \$25 fee for each increment of 5,000 gallons or any part thereof delivered into a cargo tank having a capacity of 10,000 gallons or more.

SECTION 14. Subchapter I, Chapter 26, Water Code, is amended by adding Sections 26.360-26.363 to read as follows:

Sec. 26.360. PRIVATIZATION OF PROGRAM. Notwithstanding other provisions of this subchapter, the commission by rule may authorize the privatization of any part of the program established under this subchapter.

Sec. 26.361. EXPIRATION OF REIMBURSEMENT PROGRAM. Notwithstanding any other provision of this subchapter, the reimbursement

program established under this subchapter expires September 1, 2001. On or after September 1, 2001, the commission may not:

(1) use money from the petroleum storage tank remediation fund to reimburse an eligible owner or operator for any expenses of corrective action or to pay the claim of a person who has contracted with an eligible owner or operator to perform corrective action; or

(2) collect a fee under Section 26.3574 of this code.

Sec. 26.362. SUIT TO TEST VALIDITY OF CLOSURE LETTER. The commission is immune from liability in any action against the commission to test the validity of a closure letter issued under Section 26.3572 if the letter is issued in accordance with commission rules.

Sec. 26.363. RELIANCE ON CLOSURE LETTER. An owner or operator to whom a closure letter for a site has been issued under Section 26.3752 may not be held liable for the owner's or operator's conduct taken in reliance on and within the scope of the closure letter.

SECTION 15. Chapter 244, Acts of the 71st Legislature, Regular Session, 1989 (Article 8900, Vernon's Texas Civil Statutes), is redesignated as Subchapter K, Chapter 26, Water Code, and amended to read as follows:

SUBCHAPTER K [Art. 8900]. UNDERGROUND STORAGE TANK
INSTALLERS[; REGULATIONS; PENALTIES]

Sec. 26.451 [†]. DEFINITIONS. In this subchapter [Act]:

(1) "Certificate of registration" means the document issued to an underground storage tank contractor authorizing that contractor to engage in the underground storage tank business in this state. ["Commission" means the Texas Water Commission.]

(2) "Committee" means the Petroleum Storage Tank Advisory Committee.

(3) "Critical junctures" means, in the case of an installation, repair, or removal, all of the following steps:

(A) preparation of the tank bedding immediately before receiving the tank;

(B) setting of the tank and the piping, including placement of any anchoring devices, backfill to the level of the tank, and strapping, if any;

(C) connection of piping systems to the tank;

(D) all pressure testing of the underground storage tank, including associated piping, performed during the installation;

(E) completion of backfill and filling of the excavation;

(F) any time during the repair in which the piping system is connected or reconnected to the tank;

(G) any time during the repair in which the tank or its associated piping is tested; and

(H) any time during the removal of the tank.

(4) "Installation" means the installation of underground storage tanks and ancillary equipment.

(5) [†(4)] "Installer" means a person who participates in or supervises the installation, repair, or removal of underground storage tanks.

(6) "License" means the document issued to an installer or on-site supervisor authorizing that person to engage in the underground storage tank business in this state.

(7) "On-site supervisor" means:

(A) a professional engineer registered to practice in this state who has met the licensing requirements under Section 26.456; or

(B) a person who has at least two years of active experience in the vocation of installation of underground storage tanks, underground utilities, or other engineering construction in this state and who meets the licensing requirements under Section 26.456.

(8) [(5)] "Operator" means any person in control of, or having responsibility for, the daily operation of the underground storage tank system.

(9) [(6)] "Owner" means any person who owns an underground storage tank system used for storage, use, or dispensing of regulated substances.

(10) [(7)] "Person" means a natural person, including an owner, manager, officer, employee, or occupant.

(11) [(8)] "Removal" means the process of removing and disposing of an underground storage tank that is no longer in service, or the process of abandoning an underground storage tank in place after purging the tank of vapors and filling the vessel of the tank with an inert material.

(12) [(9)] "Repair" means the modification or correction of an underground storage tank and ancillary equipment. The term does not include:

(A) relining an underground storage tank through the application of epoxy resins or similar materials;

(B) the performance of a tightness test to ascertain the integrity of the tank;

(C) the maintenance and inspection of cathodic protection devices by a corrosion expert or corrosion technician;

(D) emergency actions to halt or prevent leaks or ruptures; or

(E) minor maintenance on ancillary aboveground equipment.

(13) [(10)] "Underground storage tank" has the meaning assigned by Section 26.342[~~, Water Code~~].

[(11)] "On-site supervisor" means:

~~[(A) a professional engineer registered to practice in this state who has met the licensing requirements under Section 6 of this Act; or~~

~~[(B) an individual with at least two years of active experience in the vocation of installation of underground storage tanks, underground utilities, or other engineering construction in the State of Texas and who meets the licensing requirements under Section 6 of this Act.]~~

(14) [(12)] "Underground storage tank contractor" means a person or business entity who ~~[that]~~ offers to undertake, represents itself as being able to undertake, or does undertake to install, repair, or remove underground storage tanks.

~~[(13)] "Certificate of registration" means the document issued to an underground storage tank contractor authorizing same to engage in the underground storage tank business in this state.~~

~~[(14)] "License" means the document issued to an installer or on-site supervisor authorizing same to engage in the underground storage tank business in this state.~~

~~[(15)] "Critical junctures" means, in the case of an installation, repair, or removal, all of the following steps:~~

~~[(A) preparation of the tank bedding immediately prior to receiving the tank;~~

~~[(B) setting of the tank and the piping, including placement of any anchoring devices, backfill to the level of the tank, and strapping, if any;~~

~~[(C) connection of piping systems to the tank;~~

~~[(D) all pressure testing of the underground storage tank, including associated piping, performed during the installation;~~

~~[(E) completion of backfill and filling of the excavation;~~

~~[(F) any time during the repair in which the piping system is connected or reconnected to the tank;~~

~~[(G) any time during the repair in which the tank or its associated piping is tested; and~~

~~[(H) any time during the removal of the tank.]~~

Sec. 26.452 [2]. CERTIFICATE OF REGISTRATION. (a) An underground storage tank contractor must apply to the commission for a certificate of registration on a form prescribed by the commission. If the contractor is a partnership or joint venture, it need not register in its own name if each partner or joint venture is registered.

(b) A certificate of registration is valid for one year from the date of issue and is renewable annually on payment of the annual fee. ~~An[; provided, however, that the]~~ initial certification of registration ~~[issued on or after September 1, 1989,]~~ may be issued for a period [periods] of less than one year and the annual fee shall be prorated proportionally.

(c) Each certificate of registration must be posted in a conspicuous place in the contractor's place of business.

(d) All bids, proposals, offers, and installation drawings must prominently display the contractor's certificate of registration number.

(e) A certificate of registration issued under this subchapter [Act] is not transferable.

Sec. 26.453 [3]. LICENSE REQUIRED. (a) ~~An [Except as provided for by Subsection (b) of this section, an]~~ underground storage tank may not be installed, repaired, or removed except by an underground storage tank contractor who has an installer or an on-site supervisor who is licensed by the commission under Section 26.456 [6 of this Act] at the site at all times during the critical junctures of the installation, repair, or removal.

~~(b) [A license issued under this Act is not transferable.]~~

~~[(c)]~~ This subchapter [Act] does not apply to the installation of a storage tank or other facility exempt from regulation under Section 26.344[~~Water Code~~].

Sec. 26.454 [4]. POWERS AND DUTIES OF COMMISSION. (a) The commission shall:

(1) prescribe application forms for original and renewal licenses; and

(2) take other action necessary to enforce this subchapter [Act].

(b) With the advice of the committee, the commission shall adopt rules for the licensing of installers and on-site supervisors.

(c) The commission may adopt rules relating to continuing education requirements for installers and on-site supervisors.

Sec. 26.455 [5]. EXAMINATION. (a) At times and places designated by

the commission, the commission shall conduct an examination of applicants for licensing as installers and on-site supervisors.

(b) The commission shall prescribe the contents of the examination. Questions used in the examination must be derived from standards, instructions, and recommended practices published by organizations with expertise in various aspects of installation, removal, and repair of underground storage tanks, including the:

- (1) Petroleum Equipment Institute;
- (2) American Petroleum Institute;
- (3) Steel Tank Institute;
- (4) National Association of Corrosion Engineers;
- (5) Fiberglass Petroleum Tank and Pipe Institute; and
- (6) National Fire Protection Association.

(c) The commission shall determine standards for acceptable performance on the examination.

(d) If requested by a license applicant who fails the examination, the commission shall provide to the applicant an analysis of the applicant's performance on the examination.

Sec. 26.456 [6]. LICENSE. (a) The commission shall issue an installer or on-site supervisor license to an applicant who:

- (1) is at least 18 years of age;
- (2) meets the application requirements prescribed by commission rule, including experience in installation of underground storage tanks, underground utilities, or other engineering construction in this state [~~the State of Texas~~], not to exceed two years of active experience;
- (3) passes the licensing examination;
- (4) pays the application, examination, and licensing fees; and
- (5) meets reasonable training requirements as determined by the commission.

(b) A license issued under this subchapter [~~Act~~] is valid throughout this state but is not assignable or transferable.

Sec. 26.457 [7]. LICENSE RENEWAL. (a) A license is valid for one year and may be renewed annually on or before February 1 on payment of the required renewal fee and presentation of evidence satisfactory to the commission of compliance with any continuing education requirements adopted by the commission.

(b) If a licensee fails to renew the license by the required date, the licensee may renew the license on payment of the renewal fee and a late fee set by the commission. If the license is not renewed earlier than one year after the date on which the license expired, the licensee must retake the licensing examination administered by the commission.

Sec. 26.458 [8]. FEES. (a) The commission shall charge necessary fees to defray the costs of administering this subchapter [~~the provisions of this Act~~], which shall be deposited in the state treasury to the credit of the [~~underground~~] storage tank account [~~fund~~] and shall be used by the commission in administering [~~the provisions of~~] this subchapter [~~Act~~]. The fees may not exceed the following amounts:

- (1) examination fee \$ 50;
- (2) initial license application \$200;

- (3) annual license renewal fee \$175;
- (4) late renewal fee \$ 25;
- (5) duplicate license fee \$ 10;
- (6) certification of registration application fee \$ 50;
- (7) certification of registration issuance fee \$100;
- (8) certification of registration annual renewal fee \$ 75;
- (9) duplicate certification of registration or license \$ 10;
- (10) application to change certificate of registration \$ 70.

(b) If a person remits an examination fee and initial license application fee, the examination fee shall be applied to the license application fee so that an applicant does not ~~[no person shall]~~ pay more than \$200 for an initial application and examination.

Sec. 26.459 [9]. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE OR CERTIFICATE OF REGISTRATION; REINSTATEMENT. (a) The commission may deny, suspend, revoke, or reinstate a license or certificate of registration.

(b) The commission shall adopt rules establishing the grounds for denial, suspension, revocation, or reinstatement of a license or certificate of registration, and establishing procedures for disciplinary actions.

(c) Proceedings relating to the suspension or revocation of a license or certificate of registration issued under this subchapter [Act] are subject to Chapter 2001, Government Code ~~[the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes)]~~.

(d) A person or business entity whose license or certificate of registration has been revoked may apply for a new license or certificate of registration after the expiration of one year from the date of the revocation.

Sec. 26.460 ~~[10. ADVISORY COMMITTEE]~~. (a) ~~The Petroleum Storage Tank Advisory Committee is established.~~

~~[(b) The committee is composed of nine members appointed by the governor with the advice and consent of the senate. Committee members serve for staggered six-year terms, with the terms of three members expiring February 1 of each odd-numbered year. A member is not eligible for appointment to successive terms.~~

~~[(c) The governor shall appoint all members of the committee, of whom:~~

~~[(1) no more than three members may be appointed from a single metropolitan area;~~

~~[(2) three members must be persons with experience in the operation of underground storage tanks;~~

~~[(3) one member must be a professional engineer registered to practice in this state;~~

~~[(4) one member must be a person who is not eligible for a license under this Act but who has demonstrated experience in environmental protection, fire protection, or the operation and maintenance of underground storage tanks;~~

~~[(5) three members must be persons who own construction firms engaged in installation of underground petroleum storage tanks in the State of Texas; and~~

~~[(6) one member must be a representative of the financial industry with experience in underground storage tank corrective action.~~

~~[(d) The governor annually shall designate one member to serve as chairman. The committee, at a minimum, shall meet quarterly, at the call of the chairman, or at the call of the chairman of the commission.~~

~~[(e) The committee shall provide technical expertise to the commission regarding petroleum storage tanks and shall advise the commission in the adoption of rules pertaining to the commission's petroleum storage tank program (31 TAC Chapter 334) and for the licensing and regulation of installers and corrective action specialists.~~

[Sec. 11]. Criminal, Civil, and Administrative PENALTIES. (a) A person or business entity commits an offense if the person or business entity engages in ~~[supervises]~~ the installation, repair, or removal of an underground storage tank and the person or business entity:

(1) does not hold a certificate of registration issued under Section 26.452; and

(2) is not under the substantial control of a person or business entity who holds a certificate of registration issued under Section 26.452.

(b) A person commits an offense if the person performs or supervises the installation, repair, or removal of an underground storage tank unless:

(1) the person holds a license issued under Section 26.456; or

(2) another person who holds a license issued under Section 26.456 is substantially responsible for the performance or supervision of the installation, repair, or removal.

(c) A person or business entity commits an offense if the person or business entity:

(1) authorizes or allows the installation, repair, or removal of an underground storage tank to be conducted by a person or business entity who does not hold a certificate of registration issued under Section 26.452; or

(2) authorizes or allows the installation, repair, or removal of an underground storage tank to be performed or supervised by a person or business entity who does not hold a license issued under Section 26.456.

(d) A person or business entity commits an offense if the conduct of the person or business entity makes the person or business entity responsible for a violation of this subchapter or of a rule adopted or order issued under this subchapter. [in a manner that fails to comply with the requirements of Section 3 of this Act.]

(e) [(b)] An offense under [Subsection (a) of] this section is a Class A misdemeanor.

(f) [(e)] A person or business entity who commits [committing] an offense under [Subsection (a) of] this section may be assessed a civil penalty by the commission in an amount not to exceed \$2,500 for each day of violation.

(g) In addition to the criminal and civil penalties imposed under this section, a person or business entity who commits an offense under this section or who violates Subchapter I or a rule adopted or order issued under Subchapter I is subject to an administrative penalty as provided by Section 26.136. [(d) If an owner fails to comply with the requirements of Section 3 of this Act, or a rule adopted by the commission to implement this Act, the person may be assessed a civil penalty by the commission in an amount not to exceed \$2,500 for each day of the violation.

~~[Sec. 12. Initial appointments. In making the initial appointments to the advisory committee, the governor shall designate three members for terms expiring in 1991, three members for terms expiring in 1993, and three members for terms expiring in 1995.]~~

~~[Sec. 13. Effective date for license requirement. A person is not required to obtain a license under this Act until February 1, 1990.]~~

SECTION 16. Section 403.092(c), Government Code, as added by Section 1, Chapter 533, Acts of the 73rd Legislature, 1993, is amended to read as follows:

(c)(1) The comptroller may temporarily transfer cash from the general revenue fund to the petroleum storage tank remediation fund during the 1996-1997 [1994-1995] biennium for the purpose of paying reimbursement claims against that fund that are filed with the Texas Natural Resource Conservation Commission on or before August 31, 1995, and for paying the necessary expenses associated with the administration of that fund. The amount of cash to be transferred shall not exceed \$120 million. The transfer shall be made on September 1, 1995 [1993], or as soon as practicable thereafter.

(2) Notwithstanding other law, \$80 million of the fees collected under Section 26.3574, Water Code, shall be deposited to the credit of the general revenue fund not later than August 31, 1996, and \$40 million of those fees shall be deposited to the credit of that fund not later than May 31, 1997 [until the amount of the fee collections so deposited to the credit of the general revenue fund equals the amount of the temporary cash transfer authorized in Subdivision (1)]. The remaining fees [Fees] collected under that section in excess of the amounts [amount] required by this subdivision to be deposited to the credit of the general revenue fund shall be deposited to the credit of the petroleum storage tank remediation fund.

(3) The amount transferred under Subdivision (1) is a receivable of the general revenue fund for the purpose of statements that the comptroller submits under Article III, Section 49a, of the Texas Constitution. The transferred amount is available for appropriation by the legislature.

(4) This subsection expires on the latter of August 31, 1997 [1995], or the date of full repayment to the general revenue fund of the amount required under Subdivision (2).

SECTION 17. (a) The change in law made by Section 26.460, Water Code, as added by this Act, applies only to an offense committed or violation that occurs on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurred before that date.

(b) An offense committed or violation that occurred before the effective date of this Act is governed by the law in effect when the offense was committed or violation occurred, and the former law is continued in effect for that purpose.

SECTION 18. This Act takes effect September 1, 1995.

SECTION 19. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Senate Amendment No. 1

Amend **CSHB 2587** as follows:

On page 8, line 68, strike "Section 26.3752" and substitute "Section 26.3572".

HB 2599 - WITH SENATE AMENDMENT

Representative Kubiak called up with a senate amendment for consideration at this time,

HB 2599, A bill to be entitled An Act relating to the licensing and regulation of certain persons dealing in salvage vehicles and parts; providing criminal penalties.

On motion of Representative Kubiak, the house concurred in the senate amendment to **HB 2599**.

HB 2599 - TEXT OF SENATE AMENDMENT

CSHB 2599, A bill to be entitled An Act relating to the licensing and regulation of certain persons dealing in salvage vehicles and parts; providing criminal penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 1, Title 116, Revised Statutes, is amended by adding Article 6687-1a to read as follows:

Art. 6687-1a. SALVAGE VEHICLE DEALERS

PART 1. GENERAL PROVISIONS

Sec. 1.01. DEFINITIONS. In this article:

(1) "Actual cash value" means the market value of a motor vehicle as determined:

(A) from publications that are commonly used in the automotive and insurance industries to establish the value of motor vehicles; or

(B) if the entity determining the value is an insurance company, by any other procedure recognized by the insurance industry, including market surveys, that is applied by the company in a uniform manner.

(2) "Automobile recycler" means a person who engages in the business of dealing in salvage vehicles for the purpose of dismantling the vehicles to sell used parts and the resulting scrap metal or a person otherwise engaged in the business of acquiring, selling, or dealing in salvage parts. The term includes a dealer in used motor vehicle parts.

(3) "Casual sale" means the sale at auction of not more than one nonrepairable motor vehicle or late model salvage motor vehicle to the same person during a calendar year.

(4) "Commission" means the Texas Transportation Commission.

(5) "Department" means the Texas Department of Transportation.

(6) "Late model motor vehicle" means a motor vehicle with a model year equal to the then current calendar year or one of the five preceding calendar years.

(7) "Major component part" means one of the following parts of a vehicle:

- (A) the engine;
- (B) the transmission;
- (C) the frame;
- (D) the right or left front fender;
- (E) the hood;
- (F) a door allowing entrance to or egress from the passenger compartment of the vehicle;
- (G) the front or rear bumper;
- (H) the right or left quarter panel;
- (I) the deck lid, tailgate, or hatchback;
- (J) the cargo box of a pickup truck;
- (K) the cab of a truck; or
- (L) the body of a passenger vehicle.

(8) "Motor vehicle" has the meaning assigned by the Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes).

(9) "Nonrepairable vehicle" means:

(A) a late model vehicle that is damaged or missing a major component part to the extent that the total estimated cost of repairs to rebuild or reconstruct the vehicle, including parts and labor other than the cost of materials and labor for repainting the vehicle but excluding sales taxes on the total cost of the repairs, and excluding the cost of repairs to repair hail damage, is equal to or greater than an amount equal to 95 percent of the actual cash value of the vehicle in its predamaged condition; or

(B) a vehicle that comes into this state with a nonrepairable vehicle certificate of title or other comparable certificate of title.

(10) "Nonrepairable vehicle certificate of title" means any document issued by the department that evidences ownership of a nonrepairable vehicle.

(11) "Out-of-state buyer" means a person licensed by another state or jurisdiction in an automotive business if the department has listed the holders of such license as permitted purchasers of salvage motor vehicles or nonrepairable motor vehicles based on substantially similar licensing requirements and on whether salvage vehicle dealers licensed in Texas are permitted to purchase salvage motor vehicles or nonrepairable motor vehicles in the other state or jurisdiction.

(12) "Person" means an individual, partnership, corporation, trust, association, or other private legal entity.

(13) "Salvage part" means a major component part of a late model salvage vehicle that is serviceable to the extent that it can be reused.

(14) "Salvage vehicle" or "late model salvage vehicle" means:

(A) a late model motor vehicle with a major component part that is damaged or missing to the extent that the total estimated cost of repairs to rebuild or reconstruct the vehicle, including parts and labor, but excluding the cost of repairs to repair hail damage, is equal to or greater than an amount equal to 75 percent of the actual cash value of the vehicle in its predamaged condition; or

(B) a damaged vehicle that comes into this state under a salvage vehicle certificate of title or other comparable certificate of title.

(15) "Salvage vehicle agent" means a person employed by a licensed

salvage vehicle dealer to acquire, sell, or otherwise deal in late model salvage vehicles or salvage parts in this state.

(16) "Salvage vehicle certificate of title" means any document issued by the department that evidences ownership of a salvage vehicle.

(17) "Salvage vehicle dealer" means a person who is engaged in this state in the business of acquiring, selling, or otherwise dealing in salvage vehicles or vehicle parts of a type required to be covered by a salvage vehicle certificate of title or nonrepairable vehicle certificate of title under a license issued by the department that allows the holder of the license to acquire, sell, dismantle, repair, or otherwise deal in salvage vehicles.

(18) "Salvage pool operator" means a person who engages in the business of selling nonrepairable vehicles or salvage vehicles at auction, including wholesale auction, or otherwise.

(19) "Salvage vehicle record" means the record of sales and purchases for each salvage vehicle handled by a salvage vehicle dealer.

Sec. 1.02. POWERS AND DUTIES OF COMMISSION. (a) The Texas Transportation Commission shall adopt rules as necessary to administer this article and may take other action as necessary to enforce this article.

(b) The commission shall set application fees, license fees, renewal fees, and other fees as required to implement this article. The commission shall set the fees in amounts reasonable and necessary to implement this article.

Sec. 1.03. DETERMINATION OF ESTIMATED COST OF REPAIR. (a) The estimated cost of repair parts shall be determined by using a manual of repair costs or other instrument that is generally recognized and commonly used in the motor vehicle insurance industry to determine those costs or an estimate of the actual cost of the repair parts.

(b) The estimated labor costs shall be computed by using the hourly rate and time allocations that are reasonable and commonly assessed in the repair industry in the community in which the repairs are performed.

PART 2. LICENSE REQUIREMENTS

Sec. 2.01. LICENSE REQUIRED; EXEMPTIONS. (a) A person may not act as an automobile recycler or salvage vehicle dealer, including storing or displaying vehicles as an agent or escrow agent of an insurance company, unless the person holds a salvage vehicle dealer license issued under this article.

(b) A person may not act as a salvage vehicle agent unless the person holds a salvage vehicle agent license issued under this article.

(c) This article does not apply to an insurance company authorized to engage in the business of insurance in this state.

(d) This article does not apply to, and does not preclude or prohibit any sales to, purchases by, or other transactions by or with, a person described by Subsection (g), Article 6687-2b, Revised Statutes, except as provided by Subsection (e) or (f) of this section.

(e) A person described by Subsection (g), Article 6687-2b, Revised Statutes, shall submit to the department the certificate of title or equivalent document that the person receives in conjunction with the purchase of a motor vehicle not later than the 60th day after the date of receipt of the certificate of title or equivalent document.

(f) This article applies to a transaction with a person described by

Subsection (g), Article 6687-2b, Revised Statutes, in which a motor vehicle is sold or delivered to the person for the purpose of reuse or resale as a motor vehicle or as motor vehicle parts if the motor vehicle is so used.

(g) Except as otherwise provided by this subsection, this article does not apply to a person who purchases a nonrepairable vehicle or salvage vehicle from a salvage pool operator in a casual sale. The commission shall adopt rules as necessary to regulate casual sales and to enforce this subsection. A salvage vehicle pool operator that sells a vehicle in a casual sale shall comply with each rule adopted by the commission regarding that sale.

(h) This article does not prohibit the sale to any person of a vehicle that is classified as a late model salvage vehicle or a nonrepairable vehicle solely because of water damage caused by flood conditions.

Sec. 2.02. LICENSE APPLICATION. (a) An applicant for a salvage vehicle dealer license must apply on a form prescribed by the department. The application form must be signed by the applicant and accompanied by the application fee. The application must include:

(1) the name, business address, and business telephone number of the applicant;

(2) the name under which the applicant will do business;

(3) the location, by number, street, and municipality, of each office from which the applicant will conduct business;

(4) a statement indicating whether the applicant has previously applied for a license under this article, the result of the previous application, and whether the applicant has ever been the holder of a license under this article that was revoked or suspended;

(5) a statement of the previous history, record, and associations of the applicant to the extent sufficient to establish, to the satisfaction of the department, the business reputation and character of the applicant;

(6) the applicant's federal tax identification number, if any;

(7) the applicant's state sales tax number; and

(8) other information as required by rules adopted under this article.

(b) A license may not be issued in a fictitious name that may be confused with or is similar to that of a governmental entity or that is otherwise deceptive or misleading to the public.

Sec. 2.03. ADDITIONAL REQUIREMENTS FOR CORPORATE OR PARTNERSHIP LICENSE. (a) If a salvage vehicle dealer license applicant intends to engage in business through a corporation, the license application must include, in addition to the information required under Section 2.02 of this article:

(1) the state of incorporation;

(2) the name, address, date of birth, and social security number of each of the principal officers and directors of the corporation;

(3) a statement of the previous history, record, and associations of each officer and director to the extent sufficient to establish, to the satisfaction of the department, the business reputation and character of the applicant; and

(4) a statement showing whether an employee, officer, or director has been refused a license as a salvage vehicle dealer or has been the holder of a license that was revoked or suspended.

(b) If the license applicant intends to engage in business through a partnership, the license application must include, in addition to the information required under Section 2.02 of this article:

(1) the name, address, date of birth, and social security number of each owner or partner;

(2) a statement of the previous history, record, and associations of each owner and partner to the extent sufficient to establish, to the satisfaction of the department, the business reputation and character of the applicant; and

(3) a statement showing whether a partner, owner, or employee has been refused a license as a salvage vehicle dealer or has been the holder of a license that was revoked or suspended.

Sec. 2.04. CLASSIFICATION OF LICENSE ENDORSEMENTS. (a) The department shall classify salvage vehicle dealers according to the type of activity performed by the dealers. A salvage vehicle dealer may not engage in activities of a particular classification as provided by this article unless the salvage vehicle dealer holds a license endorsement under that classification.

(b) An applicant may apply for a salvage vehicle dealer license with an endorsement in one or more of the following classifications:

(1) new automobile dealer;

(2) used automobile dealer;

(3) used vehicle parts dealer;

(4) salvage vehicle pool operator;

(5) salvage vehicle broker; or

(6) salvage vehicle rebuilder.

Sec. 2.05. INVESTIGATION. (a) The department may not grant a license under this article until the department completes an investigation of the applicant's qualifications under this article.

(b) The department shall conduct the investigation not later than the 15th day after the date on which the application is received by the department and shall report the results of the investigation to the applicant.

Sec. 2.06. LICENSE ISSUANCE. The department shall issue a license to an applicant who meets the license qualifications adopted under this article and pays the required fees.

Sec. 2.07. LICENSE RENEWAL. (a) A license issued under this article expires on the first anniversary of the date of issuance and may be renewed annually on or before the expiration date on payment of the required renewal fee.

(b) If a license holder fails to renew the license before its expiration date, the license holder may renew the license on payment of the renewal fee and a late fee set by the commission. If the license is not renewed before the first anniversary of the date on which the license expired, the license holder must apply for a new license in the same manner as an applicant for an initial license.

Sec. 2.08. REGISTRATION OF BUSINESS LOCATIONS. (a) A license applicant who intends to operate as a salvage vehicle dealer at more than one location must list in the application each location at which business is to be conducted.

(b) Before moving a place of business or opening an additional place of business, a salvage vehicle dealer must register the new location with the department.

PART 3. DUTIES OF LICENSE HOLDER

Sec. 3.01. CERTIFICATE OF TITLE. (a) If a salvage vehicle dealer acquires ownership of a late model salvage vehicle from an owner, the dealer must receive an assigned certificate of title. If the assigned certificate of title is not a salvage vehicle certificate of title, a nonrepairable vehicle certificate of title, or comparable ownership document issued by another state or jurisdiction, the licensed salvage vehicle dealer shall, not later than the 10th day after the date of receipt of the title, surrender the assigned certificate of title to the department and apply for a salvage vehicle certificate of title or a nonrepairable vehicle certificate of title, as appropriate.

(b) If a late model salvage vehicle or nonrepairable vehicle is to be dismantled, scrapped, or destroyed, the salvage vehicle dealer shall surrender an assigned certificate of title, salvage vehicle certificate of title, nonrepairable vehicle certificate of title, or comparable ownership document issued by another state or jurisdiction to the department in the manner prescribed by the department not later than the 30th day after the date the vehicle is acquired and report to the department that the vehicle was dismantled, scrapped, or destroyed.

(c) If the holder of a salvage vehicle dealer license acquires ownership of an older model vehicle from an owner and receives an assigned certificate of title and the vehicle is to be dismantled, scrapped, or destroyed, the license holder shall surrender the assigned certificate of title to the department on a form prescribed by the department not later than the 30th day after the date on which the title is received and present evidence that the vehicle was dismantled, scrapped, or destroyed. The license holder shall keep a record of the vehicle.

Sec. 3.02. RECORDS. Each holder of a salvage vehicle dealer license shall maintain records of each salvage vehicle and any salvage parts purchased by the license holder and shall maintain sales records as required by this article.

Sec. 3.03. AUTHORIZED SALE. A person may not sell, transfer, or release a late model salvage vehicle or a nonrepairable motor vehicle to anyone other than:

- (1) a governmental entity;
- (2) the vehicle's former owner;
- (3) a licensed salvage vehicle dealer;
- (4) an out-of-state buyer;
- (5) a buyer in a casual sale at auction; or
- (6) a person described by Subsection (g), Article 6687-2b, Revised Statutes.

Sec. 3.04. AGENTS. The holder of a salvage vehicle dealer license may authorize not more than five persons to operate as salvage vehicle agents under the dealer's license. An agent may acquire, sell, or otherwise deal in late model salvage vehicles, nonrepairable vehicles, or salvage parts as directed by the dealer. An agent authorized to operate under this section is entitled to a salvage vehicle agent license on application to the department and payment of the required fee.

PART 4. DISCIPLINARY ACTIONS AND PENALTIES

Sec. 4.01. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (a) The department may deny, suspend, revoke, or reinstate a license issued under this article.

(b) The commission shall adopt rules establishing the grounds for the denial, suspension, revocation, or reinstatement of a license and establishing procedures for disciplinary actions.

(c) Proceedings relating to the denial, suspension, or revocation of a license issued under this article are subject to Chapter 2001, Government Code.

(d) A person whose license is revoked may not apply for a new license before the first anniversary of the date of the revocation.

Sec. 4.02. CRIMINAL PENALTY. (a) A person commits an offense if the person acts as a salvage vehicle dealer without a salvage vehicle dealer license issued under this article.

(b) A person commits an offense if the person acts as a salvage vehicle agent without a salvage vehicle agent license issued under this article.

(c) A person commits an offense if the person violates a provision of this article, other than Subsection (a) or (b) of this section, or a rule adopted by the commission under this article.

(d) An offense under this section is a Class A misdemeanor.

PART 5. EFFECT ON LOCAL REGULATION

Sec. 5.01. CUMULATIVE EFFECT; EFFECT ON MUNICIPAL LICENSES. (a) This article is cumulative of municipal ordinances relating to the regulation of persons who deal in salvage vehicles.

(b) This article does not prohibit, and may not be construed as prohibiting, the enforcement of a requirement of a municipal license or permit that is related to an activity regulated under this article.

SECTION 2. Section 1, Chapter 506, Acts of the 57th Legislature, Regular Session, 1961 (Article 6687-2, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. SALVAGE VEHICLE DEALERS. (a) In this section:

(1) "Salvage vehicle [~~Motor vehicle salvage~~] dealer" has the meaning assigned by Article 6687-1a, Revised Statutes [~~means an individual, corporation, association, partnership, organization, or other entity engaged in the business of obtaining abandoned, wrecked, or junked motor vehicles or motor vehicle parts for scrap disposal, resale, repairing, rebuilding, demolition, or other form of salvage~~].

(2) "Component part" means the front end assembly or tail section of a motor vehicle, the cab of a truck (light or heavy), the bed of a one ton or lighter truck, an interior component part of a motor vehicle, a special accessory part, or a vehicle part that contains or should contain a federal safety sticker, motor number, serial number, manufacturer's permanent vehicle identification number, or a derivative of a vehicle identification number.

(3) "Front-end assembly" means the hood, right or left front fender, grill, bumper, radiator, or radiator support, if two or more such parts are assembled together as one unit.

(4) "Tail section" means the roof, floor pan, right or left rear quarter panel, deck lid, or rear bumper, if two or more of such parts are assembled together as one unit.

(5) "Federal safety sticker" means a sticker, label, or tag required by 49 U.S.C. Section 30115 [~~15 U.S.C. Section 1403~~] or rules adopted under that section.

(6) "Interior component part" means the front or rear seat or radio of a motor vehicle.

(7) "Special accessory part" means the tire, wheel, tailgate, or removable glass top of a motor vehicle.

(8) "Motor vehicle" has the meaning given by Subsection (b), Section 2, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes).

(b) A ~~[motor vehicle]~~ salvage vehicle dealer with an endorsement as a used vehicle parts dealer may not receive a motor vehicle ~~[described in Subsection (a) of this section,]~~ unless the dealer first obtains a certificate of authority, sales receipt, or transfer document under Sections 5.04 and 5.10, respectively, Article V, Section 1, Chapter 741, Acts of the 67th Legislature, Regular Session, 1981 (Article 4477-9a, Vernon's Texas Civil Statutes), or a Certificate of Title showing that there are no liens on the vehicle or that all recorded liens have been released. On receipt of a vehicle, a ~~[motor vehicle]~~ salvage vehicle dealer shall immediately remove any unexpired license plates from the motor vehicle and place them in a secure, locked place. An inventory list of such plates showing the license number, the make, the motor number, and the vehicle identification number of the motor vehicle from which such plates were removed shall be maintained on forms to be furnished by the Texas [State] Department of ~~[Highways and Public]~~ Transportation. Upon demand and if required, the Certificate of Title or authority, the sales receipt, or transfer document, the license plates, and inventory lists shall be surrendered to the Texas [State] Department of ~~[Highways and Public]~~ Transportation for cancellation. It is further provided that all Certificates of Title covering such motor vehicles shall, if required, be surrendered to the Texas [State] Department of ~~[Highways and Public]~~ Transportation for cancellation. It shall thereafter be the duty of the Texas [State] Department of ~~[Highways and Public]~~ Transportation to furnish a signed receipt for the surrendered license plates and Certificates of Title.

(c) A ~~[motor vehicle]~~ salvage vehicle dealer shall keep an accurate and legible inventory of each used component part purchased by or delivered to the dealer [him], as follows:

- (1) date of purchase or delivery;
- (2) name, age, address, sex, and driver's license number of the seller and a legible photocopy of the seller's driver's license;
- (3) the license number of the motor vehicle used to deliver the used component part;
- (4) a complete description of the item purchased, including the type of material and, if applicable, the make, model, color, and size of the item; and
- (5) the vehicle identification number of the motor vehicle from which the used component part was removed.

(d) A ~~[motor vehicle]~~ salvage vehicle dealer is not required to keep records under Subsection (c) of this section of:

- (1) interior used component parts or special accessory parts on a motor vehicle more than 10 years of age; or
- (2) used component parts delivered by commercial freight lines or commercial carriers.

(e) In lieu of the requirements contained in Subsection (c) of this section, a ~~[motor vehicle]~~ salvage vehicle dealer may record the name of the business [dismantler] that the motor vehicle or motor vehicle part is purchased from and the Texas Certificate of Inventory number or federal taxpayer identification number.

~~(f) A [(e) — An automobile]~~ salvage vehicle dealer shall keep all records required to be kept by this article for one year after the date of sale or disposal of the item, and he shall allow an inspection of the records by a peace officer at any reasonable time. A peace officer may inspect the inventory on the premises of the ~~[automobile]~~ salvage vehicle dealer at any reasonable time in order to verify, check, or audit the records. A [An automobile] salvage vehicle dealer or an employee of the dealer shall allow and shall not interfere with a full and complete inspection by a peace officer of the inventory, premises, and inventory records of the dealer.

(g)(1) Except as provided by Subdivision (3) of this subsection, a salvage vehicle dealer shall:

(A) assign a unique inventory number to each transaction in which the dealer purchases or takes delivery of one or more component parts;

(B) attach the unique inventory number to each component part the dealer obtains in the transaction; and

(C) retain each component part in its original condition on the business premises of the salvage vehicle dealer who originally purchased the part for at least three calendar days, excluding Sundays, after the date on which the dealer obtains the part.

(2) A unique inventory number attached to a component part as required by Subdivision (1) of this subsection may not be removed while the part remains in the inventory of the salvage vehicle dealer. [(f)] If a component part does not have a vehicle identification number or the vehicle identification number has been removed or the vehicle identification number of the vehicle from which the component part was removed is not available, a motor vehicle salvage dealer shall record the component part or component parts on an affidavit bill of sale. The form of the affidavit bill of sale shall be prescribed and made available by the Texas [State] Department of ~~[Highways and Public]~~ Transportation.

(3) Subdivisions (1) and (2) of this subsection do not apply to the purchase by a salvage vehicle dealer of a nonoperable engine, transmission, or rear axle assembly from another motor vehicle salvage dealer or an automotive-related business.

(h) [(g)] A [motor vehicle] salvage vehicle dealer shall keep a record required to be kept by this section on a form prescribed by the Texas [State] Department of ~~[Highways and Public]~~ Transportation. The dealer shall maintain two copies of each record for one year after the date of sale or disposal of the item. On demand of a peace officer, the dealer shall give a copy of a record to the officer.

(i) [(h)] The Texas [State] Department of ~~[Highways and Public]~~ Transportation shall:

(1) prescribe the form to be used as required by Subsection (c) [(e)] of this section; and

(2) make the form available to ~~[motor vehicle]~~ salvage vehicle dealers.

(j) ~~(i)~~ A ~~[motor vehicle]~~ salvage vehicle dealer or an employee of the dealer shall allow an inspection of the dealer's required inventory records and affidavit bills of sale by a peace officer at any reasonable time. A peace officer may inspect the inventory on the premises of the dealer at any reasonable time in order to verify, check, or audit the records. The dealer or the employee shall allow and shall not interfere with a full and complete inspection by a peace officer of the inventory, premises, and required inventory records and affidavit bills of sale of the dealer.

(k) ~~(j)~~ A peace officer may seize, hold, and dispose of according to the Code of Criminal Procedure a motor vehicle or part thereof which has been stolen or which has been altered so as to remove, change, mutilate, or obliterate a permanent vehicle identification number, derivative number, motor number, serial number, or federal safety sticker.

(l) ~~(k)~~ Except as provided by Subsections (m) ~~(j)~~ and (o) ~~(n)~~ of this section, a person who fails to comply with any provision of this section or violates a provision of this section commits a Class A misdemeanor.

(m) ~~(l)~~ A person commits an offense if the person commits theft as defined by Section 31.03, Penal Code, and the person fails to comply with any provision of this section or violates a provision of this section in conjunction with the commission of the theft.

(n) ~~(m)~~ Except as provided by Subsection (o) ~~(n)~~ of this section, an offense under Subsection (m) ~~(l)~~ of this section is a Class A misdemeanor.

(o) ~~(n)~~ If it is shown on the trial of an offense under Subsection (m) ~~(l)~~ of this section that the defendant has previously been convicted of an offense under that subsection, the offense is punishable as a felony of the third degree.

SECTION 3. Article 6687-2a, Revised Statutes, is amended to read as follows:

Art. 6687-2a. INJUNCTION; ~~[MOTOR VEHICLE]~~ SALVAGE VEHICLE DEALERS. (a) If a ~~[motor vehicle]~~ salvage vehicle dealer or an employee of the dealer acting in the course of his employment is convicted of more than one offense under Section 1, Chapter 506, Acts of the 57th Legislature, Regular Session, 1961 (Article 6687-2, Vernon's Texas Civil Statutes), a district attorney of the county in which the dealer's salvage business is located may bring an action in the county to enjoin the dealer's business operations. The proceedings must be brought in the name of the state.

(b) If judgment is in favor of the petitioner, the court shall grant an injunction enjoining the dealer from maintaining or participating in the business of a ~~[motor vehicle]~~ salvage vehicle dealer for a definite period of time or indefinitely, as determined by the court. The judgment must order that the place where the dealer's business is located be closed for the same period of time.

SECTION 4. Subsections (a) and (f), Article 6687-2b, Revised Statutes, are amended to read as follows:

(a) A ~~[motor vehicle]~~ salvage vehicle dealer may not operate heavy machinery in a motor vehicle salvage yard between the hours of 7 p.m. of one day and 7 a.m. of the following day.

(f) In this article, "~~[motor vehicle]~~ salvage vehicle dealer" has the meaning

assigned by Article 6687-1a, Revised Statutes [Section 1, Chapter 506, Acts of the 57th Legislature, Regular Session, 1961 (Article 6687-2, Vernon's Texas Civil Statutes), and its subsequent amendments].

SECTION 5. Subsection (b), Article 6687-2b, Revised Statutes, is repealed.

SECTION 6. A person is not required to hold a license under Article 6687-1a, Revised Statutes, as added by this Act, to operate as a salvage vehicle dealer until March 1, 1996.

SECTION 7. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 1995.

(b) Sections 2.01 and 4.02, Article 6687-1a, Revised Statutes, as added by this Act, take effect March 1, 1996.

(c) The Texas Transportation Commission shall adopt rules for the regulation of salvage vehicle dealers in this state not later than December 1, 1995.

SECTION 8. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

HB 2624 - WITH SENATE AMENDMENTS

Representative Craddick called up with senate amendments for consideration at this time,

HB 2624, A bill to be entitled An Act relating to the appraisal and ad valorem taxation of certain types of personal property; providing penalties.

On motion of Representative Craddick, the house concurred in the senate amendments to **HB 2624**.

HB 2624 - TEXT OF SENATE AMENDMENTS

Senate Amendment No. 1

HB 2624, House of Representatives Engrossment, is amended as follows:

(1) On page 3, line 16 of the House Engrossment, insert the following after the word "means": "a towable recreational vehicle or".

(2) On page 3 of the House Engrossment, delete all language beginning with and including the comma after the word "highway" on line 19, and ending with and including the word "vehicle" on line 21.

(3) Insert the following after page 5, line 9 of the House Engrossment:
"(14) Towable recreational vehicle" means a non-motorized vehicle that is designed for temporary human habitation for recreational, camping or seasonal use, and:

(A) is titled and registered with the Texas Department of Transportation through the county tax assessor-collector;

(B) is permanently built on a single chassis;

(C) contains one or more life support systems; and

(D) is designed to be towable by a motor vehicle."

(4) On page 7, line 10 of the House Engrossment, insert the following after the comma following the word "records": "at the location for which the general distinguishing number has been issued,".

(5) On page 8, line 6 of the House Engrossment, delete the word "person" and insert the word "dealer" after the word "A".

(6) Insert a new Section 5 of the bill, to read as follows and renumber all subsequent sections of the bill accordingly:

"SECTION 5. Section 152.002(b), Tax Code, is amended to read as follows:

(b) 'Total consideration' does not include:

(1) a cash discount;

(2) a full cash or credit refund to a customer of the sales price of a motor vehicle returned to the seller;

(3) the amount charged for labor or service rendered in installing, applying, remodeling, or repairing the motor vehicle sold;

(4) a financing, carrying, or service charge or interest on credit extended on a motor vehicle sold under a conditional sale or other deferred payment contract;

(5) the value of a motor vehicle taken by a seller as all or a part of the consideration for sale of another motor vehicle; [or]

(6) a charge for transportation of the motor vehicle after a sale, or

(7) motor vehicle inventory tax.

Senate Amendment No. 2

Amend **HB 2624** as follows:

(1) In SECTION 1 of the bill, Section 23.12(f), Tax Code (House Engrossment, page 1, line 9), strike "23.12A" and substitute "23.121 [~~23.12A~~]".

(2) In SECTION 2 of the bill, Section 23.12A, Tax Code (House Engrossment, page 2, line 2), strike "23.12A" and substitute "23.121 [~~23.12A~~]".

(3) In SECTION 2 of the bill, Section 23.12A(f), Tax Code (House Engrossment, page 6, line 17), strike "23.12B(l)" and substitute "23.122(l)".

(4) In SECTION 2 of the bill, Section 23.12A(f)(4), Tax Code (House Engrossment, page 7, line 5), strike "23.12A(b)" and substitute "23.121(b)".

(5) In SECTION 2 of the bill, Section 23.12A(g)(2), Tax Code (House Engrossment, page 7, line 20), strike "23.12B" and substitute "23.122".

(6) In SECTION 3 of the bill, Section 23.12B, Tax Code (House Engrossment, page 8, line 25), strike "23.12B" and substitute "23.122 [~~23.12B~~]".

(7) In SECTION 3 of the bill, Section 23.12B(a)(2), Tax Code (House Engrossment, page 9, line 4), strike "23.12A" and substitute "23.121".

(8) In SECTION 3 of the bill, Section 23.12B(a)(3), Tax Code (House Engrossment, page 9, line 7), strike "23.12A" and substitute "23.121".

(9) In SECTION 3 of the bill, Section 23.12B(a)(4), Tax Code (House Engrossment, page 9, line 11), strike "23.12A" and substitute "23.121".

(10) In SECTION 3 of the bill, Section 23.12B(a)(5), Tax Code (House Engrossment, page 9, line 13), strike "23.12A" and substitute "23.121".

(11) In SECTION 3 of the bill, Section 23.12B(a)(6), Tax Code (House Engrossment, page 9, line 17), strike "23.12A" and substitute "23.121 [~~23.12A~~]".

(12) In SECTION 3 of the bill, Section 23.12B(a)(8), Tax Code (House Engrossment, page 9, line 22), strike "23.12A" and substitute "23.121 [~~23.12A~~]".

(13) In SECTION 3 of the bill, Section 23.12B(a)(10), Tax Code (House Engrossment, page 10, line 3), strike "23.12A" and substitute "23.121".

(14) In SECTION 3 of the bill, Section 23.12B(a)(11), Tax Code (House Engrossment, page 10, line 5), strike "23.12A" and substitute "23.121 [23.12A]".

(15) In SECTION 3 of the bill, Section 23.12B(f), Tax Code (House Engrossment, page 12, line 25), strike "23.12A(g)" and substitute "23.121(g)".

(16) In SECTION 3 of the bill, Section 23.12B(l), Tax Code (House Engrossment, page 15, line 24), strike "23.12A" and substitute "23.121".

(17) In SECTION 4 of the bill, Section 23.12C, Tax Code (House Engrossment, page 17, line 25), strike "23.12C" and substitute "23.123".

(18) In SECTION 4 of the bill, Section 23.12C(a)(1), Tax Code (House Engrossment, page 18, line 1), strike "23.12B" and substitute "23.122".

(19) In SECTION 4 of the bill, Section 23.12C(a)(2), Tax Code (House Engrossment, page 18, line 3), strike "23.12B" and substitute "23.122".

(20) In SECTION 4 of the bill, Section 23.12C(a)(3), Tax Code (House Engrossment, page 18, line 5), strike "23.12A" and substitute "23.121".

(21) In SECTION 4 of the bill, Section 23.12C(a)(4), Tax Code (House Engrossment, page 18, line 7), strike "23.12B" and substitute "23.122".

(22) In SECTION 4 of the bill, Section 23.12C(a)(5), Tax Code (House Engrossment, page 18, line 8), strike "23.12A" and substitute "23.121".

(23) In SECTION 4 of the bill, Section 23.12C(a)(6), Tax Code (House Engrossment, page 18, line 11), strike "23.12B" and substitute "23.122".

(24) In SECTION 4 of the bill, Section 23.12C(b), Tax Code (House Engrossment, page 18, line 14), strike "23.12A" and substitute "23.121" and strike "23.12B" and substitute "23.122".

(25) In SECTION 4 of the bill, Section 23.12C(c)(5), Tax Code (House Engrossment, page 19, line 6), strike "23.12A" and substitute "23.121" and strike "23.12B" and substitute "23.122".

HB 3003 - WITH SENATE AMENDMENTS

Representative Finnell called up with senate amendments for consideration at this time,

HB 3003, A bill to be entitled An Act relating to the control and eradication of cotton pests by the Department of Agriculture.

Representative Finnell moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on the bill.

Representative Alonzo raised a point of order against further consideration of **HB 3003** on the grounds that **HB 3003** violates Article III, Section 30, of the Texas Constitution.

The point of order was withdrawn.

The motion prevailed.

HB 3003 - APPOINTMENT OF CONFERENCE COMMITTEE

The speaker announced the appointment of the following conference committee, on the part of the house, on **HB 3003**: Finnell, chair, B. Turner, R. Cuellar, Patterson, and Hawley.

HR 982 - ADOPTED

Representative J. Jones moved to suspend all necessary rules to take up and consider at this time **HR 982**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By J. Jones, Edwards, and G. Lewis,

HR 982, In memory of Juanita Tankersley.

The resolution was unanimously adopted by a rising vote.

HR 985 - ADOPTED

Representative Goolsby moved to suspend all necessary rules to take up and consider at this time **HR 985**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By Goolsby,

HR 985, Congratulating Wayne James on his receipt of the 1995 Distinguished Executive Award.

The resolution was adopted without objection.

HR 986 - ADOPTED

Representative De La Garza moved to suspend all necessary rules to take up and consider at this time **HR 986**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By De La Garza,

HR 986, Honoring Officer Romeo Zapata on his receipt of the 1995 President's Award from the Texas Probation Association.

The resolution was adopted without objection.

HR 981 - ADOPTED

Representative Moffat moved to suspend all necessary rules to take up and consider at this time **HR 981**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By Moffat,

HR 981, Expressing sympathy to the faculty and students of Grapevine High School and commending them for their strength and compassion during this difficult time.

The resolution was adopted without objection.

On motion of Representative De La Garza, the names of all the members of the house were added to **HR 981** as signers thereof.

HR 987 - ADOPTED

Representative Holzheuser moved to suspend all necessary rules to take up and consider at this time **HR 987**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By Holzheuser,

HR 987, Honoring Sgt. Tommy Dwain Kidd on his retirement.

The resolution was adopted without objection.

COMMITTEE MEETING ANNOUNCEMENTS

The following committee meetings were announced:

Public Health, on recess today, Desk 138, to consider **SB 718** and **SB 1675**.

Urban Affairs, on recess today, Desk 73.

State Affairs, 9 a.m. Friday, May 19, E1.010, Capitol Extension.

Ways and Means, on recess today, Desk 58.

Human Services, on recess today, Desk 41.

Land and Resource Management, on recess today, Desk 1.

Civil Practices, on recess today, Desk 32.

RECESS

Representative Hightower moved that the house recess until 10 a.m. tomorrow.

The motion prevailed without objection.

The house accordingly, at 5:18 p.m., recessed until 10 a.m. tomorrow.

APPENDIX

STANDING COMMITTEE REPORTS

Favorable reports have been filed by committees as follows:

Appropriations - **SB 726**

Business and Industry - **SB 558, SB 662, SB 1214**

Civil Practices - **SCR 41, SCR 52, SCR 53, SCR 93, SCR 104, SCR 105, SCR 106**

County Affairs - **SB 1624**

Criminal Jurisprudence - **SB 111, SB 280, SB 322, SB 698, SB 720, SB 886, SB 918, SB 1582**

Economic Development - **SB 1670, SB 1681**

Environmental Regulation - **SB 1683**

Financial Institutions - **SB 871, SB 1549**

Higher Education - **SB 585, SCR 124**

Human Services - **SB 89, SB 612**

Insurance - **SB 1222, SB 1514**

Juvenile Justice and Family Issues - **SB 7, SB 224**

Licensing and Administrative Procedures - **SB 442, SB 621, SB 634, SB 653, SB 1178**

Natural Resources - **SB 1076, SB 1663**

Public Health - **SB 1343, SB 1685**

Public Safety - **SB 225, SB 1177, SB 1252, SB 1337, SB 1695**

Rules and Resolutions - **HCR 200, HCR 202, HCR 203, HCR 204, SCR 142, SCR 143, SCR 144, SCR 145, HR 411, HR 835, HR 836, HR 839, HR 840, HR 843, HR 847, HR 848, HR 849, HR 850, HR 855, HR 859, HR 860, HR 861, HR 863, HR 865, HR 872, HR 873, HR 875, HR 876, HR 877, HR 878, HR 879, HR 880, HR 881, HR 882, HR 883, HR 885, HR 889, HR 891, HR 898, HR 899, HR 900, HR 901, HR 902, HR 903, HR 904, HR 906, HR 907, HR 908, HR 909, HR 910, HR 912, HR 914, HR 915, HR 916, HR 917, HR 918, HR 919, HR 920, HR 922, HR 923**

State Affairs - **SB 374, SB 1046, SB 1159, SB 1182, SB 1346, SB 1696**

State, Federal, and International Relations - **SB 528**

Transportation - **SB 896, SB 1058, SB 1314, SB 1363, SB 1701**

Ways and Means - **SB 1390**

ENGROSSED

May 17 - **HB 272, HB 1051, HB 1342, HB 1711**

ENROLLED

May 17 - **HB 176, HB 366, HB 673, HB 674, HB 1136, HB 1345, HB 1399, HB 1408, HB 2128, HB 2376, HB 2505, HJR 31, HCR 204**

SENT TO THE GOVERNOR

May 11 - **HB 383, HCR 188, HCR 199**

May 18 - **HB 176, HB 366, HB 673, HB 674, HB 1136, HB 1345, HB 1399, HB 1408, HB 2128, HB 2376, HB 2505, HCR 204**

SENT TO THE SECRETARY OF STATE

May 18 - **HJR 31**

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